



In- Service Training Programme for AIS (IAS/ IPS/IFS) Officers

On Public Procurement

Organised by CUTS Institute for Regulation & Competition

Under Aegis of

DoPT, Government of India



November 10th - 14th , 2014.

BACKGROUND:

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. As has been rightly said, Public Procurement ' 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'¹. Despite the professed importance and desirability of a sound procurement system, India is yet to have a perfect and institutionalised system of procurements. Keeping this in view, CIRC organised a five day In-service training programme under the aegis of Department of Personnel and Training (DoPT) for officers of IAS, IPS and IFS ranks at India International Centre, Lodhi Road, New Delhi.

The course covered topics such as Present status of procurement practices in India, Legal aspects and competition Issues of procurement, e-procurement and the ethics associated with the procurement process etc. This detailed procurement course was well appreciated by procurement professionals who were

¹ 'Public procurement reforms to enhance value for money', 16th November 2009, http://saiindia.gov.in/sites/default/files/6publicprocurementreforms15_12_09pdf



interested in knowing how public procurement process works and issues impeding its growth such as corruption.

PROCEEDINGS:

The training program was inaugurated on November 10th, with an impressive inaugural address by Shri Pradeep Kumar, former Chief Vigilance Commissioner of India and a welcome address by Shri Pradeep Mehta, Chairman, CIRC and founder, CUTS International, . Ms. Bulbul Sen, former Chief Commissioner of Income Tax, currently a consultant for CUTS International gave a brief introduction of the programme, throwing light on unique 360° overview of the sector including international perspective. Mr. Kumar expressed being glad about the programme, stating the effectiveness and need for training in Public Procurement for achievement of developmental goals. He also underlined the importance of human element in the procurement process, differentiating it on global and Indian front.

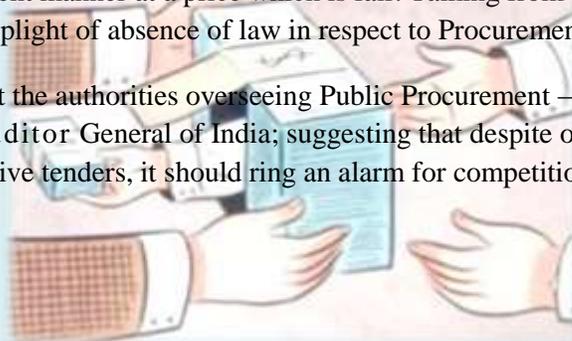


DAY 1, November 10th, 2014

Session 2: *Legal Authorities for government procurement in India and legal aspects* by Justice S.N. Dhingra -Retd. HC Judge and former member CCI

The speaker began the session by suggesting looking at Procurement process from two different angles of competition and corruption, he emphasized to ensure not only a level playing field, but also to procure in an efficient and transparent manner at a price which is fair. Talking from a legal perspective, Justice Dhingra highlighted the plight of absence of law in respect to Procurement in India.

He also mentioned about the authorities overseeing Public Procurement – Central Vigilance Commission and Comptroller and Auditor General of India; suggesting that despite of large competition, if same party is getting consecutive tenders, it should ring an alarm for competition concerns.





In the end, he talked about two types of collusion practices in the procurement process: a. collusion among bidders and b. collusion between bidder and procurer, which can't be checked by CCI, only CBI or Vigilance commission can check it.

Session 3: Present Status/ Rules of Procurement Practices in India (Including GFR, DFPR etc.) by Mr. S.N. Srivastava – Additional Director General (Supplies) DGS &D

In quite an interactive session, Mr. Srivastava elaborated on how procurement is practiced through rate contracts. He began his session by a witty animation presenting the preventive vigilance in public procurement which was quite appreciated by all the participants. Mentioning about DGS&D's role and services, he further listed different modes of procurement delving upon one being the rate contracts. Coming from Additional Director Supplies, the participants received knowledge from the first-hand experience about the guidelines concerning Public Procurements in India. The speaker then mentioned about the international scene in Public Procurement, discussing the stand of India on being an observer in the GPA of WTO.

In the next segment of his session, Mr. Srivastava elaborated on e-procurement, the benefits of e-tendering, Rate Contracts and pre and post contract matters which were listed as most important learnings by the participants after the course.

Session 4: Initiatives for Reform of Public Procurement System in India by Ms. Bulbul Sen- former Chief Commissioner of Income Tax, Consultant for CUTS International

The post-lunch session was taken by Ms. Sen, Currently, she is a consultant for CUTS International and a Member of the Expert Group of the UN Office on Drugs and Crime (UNODC) She has Co-authored three books on Public Procurement- namely "Public Procurement, Need for a National Policy in India"; "WTO Plurilateral Agreement on Government Procurement Market Access Opportunities & Challenges for India" and "Government Procurement in India Domestic Regulations & Trade Prospects". The soft copies of these were provided to all the participants. Initiating with various dimensions of public procurement in India, she deliberated upon the lacunae and consequences of the structural weaknesses in in the process leading to a need for initiatives in reform.

Further, she discussed various competition, transparency and probity promoting features of the Public Procurement Bill 2012, arguing a strong need for public procurement legislation in today's scenario. She concluded with suggesting the possible reorientation in the Bill and invoking the thought process of the participants in this regard.

Session 5: Competition Issues in Public Procurement by Mr. Sanjeev Ahluwalia-IAS (Retd.), Member Governing Council, CIRC

Mr. Ahluwalia began his session by quoting the preamble of Public Procurement Bill 2012 and pointed out the missing elements there like sustainability, orderly decentralization and oversight which is needed



for reducing administrative overburden and enhancing rigor and precision. So, he also held a strong case for experimenting procurement in the absence of regulation. Highlighting the major objectives of Procurement as- Economy, Effectiveness and Efficiency, he emphasized on the need for boosting public confidence in procurement process by introducing unambiguous bid documents, good inspection regime and differentiated purchase process.

He concluded by suggesting a good case to contract out the procurement to specialised procurement (independent) agency.

DAY 2, November 11th, 2014.

Session 1&2: *Public Procurement in Civil Works and Consultation Services* by Mr. M.P. Gupta- Former Additional Secretary, Dept. of Expenditure, Ministry of Finance, Govt. of India.

The second day began with Mr. Gupta's session on the two basic pillars of procurement- civil works and services. He elaborated well in his first session on public procurement on civil works, dealing from the major changes that have been brought in civil works, wherein, he talked about EPC (Engineering, Procurement and Construction) and how it differs from existing item-rate contracts. He solved the participants' queries by suggesting a model EPC Agreement.

In the following session, dealing with the procurement of services, he gave some resource guides for selecting consultants in general as well as for complex projects. He laid emphasis in his session on what is defined in General Financial Rules for out-sourcing of services. Further, laying down the complex procedure for selecting consultants based on essential terms of reference, he concluded his session by elaborating on details of request of proposals, financial proposal, evaluation of proposals and the entire process of nominated consultants.

Session 3: *Leveraging Public Procurement for Achieving Sustainability Goals* by Mr. Sanjay Kumar- Dy. Chief Materials Manager, Northern Railways, Govt. of India.

Following Mr. Gupta, we had Mr. Sanjay Kumar, Dy. Chief Materials Manager from Northern railways, who successfully inculcated a very interactive session, being a participant himself in a major Government Procurement process. He emphasized on sustainable procurement, laying down the contemporary sustainability challenges first and further establishing a linkage between sustainability and procurement. He listed down the rising demography being a major deterrent to greener and sustainable procurement process in India.

Further, he justified how do we shift away from business-as-usual resource intensive strategies and embrace a growth strategy that is based on resource efficiency, stressing on the benefits offered by Sustainable Public Procurement (SPP). He elaborated well on the Life Cycle Cost of the project and



explained how evaluation of bids must be based on it. Participants developed a better understanding of the issue as he incorporated many examples and experience of SPP globally in his presentation.

He concluded his session by highlighting our strengths of significant procurement budget and vibrant domestic markets vis-a-vis our weaknesses and means to overcome them by suggesting a way forward.

Session 4& 5: Public Procurement in Public Private Partnership (PPP) Projects and Case studies on Procurement in PPP Projects by Mr. Jeetendra Singh- Director- PPP and Infrastructure, Planning Commission.

The last two sessions of the day were delivered by Mr. Jeetendra Singh, who is Director of PPP and Infrastructure at Planning Commission. He delved upon the Procurement in Public Private Partnership projects. While comparing conventional vs. PPP Procurement, he outlined the parameters which determine the viability of PPP. He also elaborated upon the decision of bid parameters of a PPP project and procurement of consultants for the same. Using examples to substantiate his arguments, he talked about Model Concession Agreements.

The highlight of his session was the practical case studies that he illustrated and discussed regarding the Concession for the Delhi Noida Bridge, elaborating upon its robust contract design as well as associated shortfalls.

DAY 3, November 12th, 2014.

Session 1: World Bank Procurement Guidelines and Procedures by Mr. A.K. Kalesh Kumar- Capacity Building Coordinator- Procurement Governance- Global Practice, The World Bank.

The third day began well with a rather technical, yet interesting session on the guidelines that The World Bank follows on Procurement. Mr. Kalesh Kumar from World Bank told the participants about Bank's basic lending instruments and the investment project cycle, discussing the role of the Bank in these funded projects. He further disseminated among the participants the major contracts financed by the World Bank, top major sectors in the FY13 being 1.transportation and 2.water and sanitation (by contract amount, having 38 % and 22% share respectively). He further shared his knowledge on a very important topic - Bank's role in procurement and a buyer's role in process of procurement.

In the end, he introduced the concept of International Competitive Bidding, presenting a critique of Bank's policies, and further suggesting a new policy framework in the anvil.

Session 2: Countering Corruption by Ms. Cristina Albertin- Representative, South Asia, UNODC.

The session that followed was by the South Asia Representative of United Nations Office on Drugs and Crime- UNODC, who discussed Article 9 & allied Articles of the United Nations Convention Against



Corruption (UNCAC). Talking briefly about UNODC, the speaker emphasized on its key mandates on Corruption and Crime, mentioning the UNCAC. Further, she presented an overview on the key points and areas of focus of UNCAC- Prevention, Asset Recovery, and International Cooperation. During her presentation, she also focused on UNODC's efforts of countering corruption in S. Asia.

Towards the end of her session, she discussed on Probity in Public Procurement and Corporate Integrity, emphasizing on training in probity and advocating a stringent selection process for procuring personnel.

Session 3: Central Vigilance Commission Guidelines on Public Procurement by Mr. J.M. Garg- Former Vigilance Commissioner, Central Vigilance Commission.

What could have been a better opportunity for the participants than having a session on 'Central Vigilance Commission Guidelines' from the former vigilance commissioner himself ! We had Mr. J.M. Garg, who efficiently and tactfully told participants about detailed guidelines of CVC in respect of procurement and award of contracts. He favoured a case for use of technology, i.e. e-tendering, e-auction and reverse auction techniques to ensure transparency and value for money without compromising on quality. He then focused on training of the staff and senior executives on procurement guidelines and procedures who are engaged in the process of procurement. Talking about the corruption associated with procurement, he underlined the need for a culture of honesty and ethical leadership existing in the guidelines, which prevents the procedures and code of conduct to be violated sometimes due to lack of awareness but mostly intentionally.

He concluded by answering officers' queries about CVC and clarified their confusions regarding the guidelines laid by CVC.

Session 4: The Integrity Pact Mechanism in Public Procurement: whether an effective tool to promote Probity by Mr. Paramjit Singh Bawa, IPS (Retd.) Former Chairman, Transparency International.

The concluding session of the day was conducted by MR. P.S. Bawa, ret. IPS, who in his session emphasized on the importance and usefulness of the Integrity Pact, a MoU which needs to be signed as a tool for transparent functioning with corporates. The MoU recognizes that progress in procurement requires sustained efforts for implementing the Integrity Pact programme, whose main objective is to enable companies to abstain from bribing and malpractices, and enabling government to reduce high costs and distorting impact of corruption. He further discussed the status of Integrity Pact in India and its advantages.

He ended his session by stating a need for transparency to be penetrated even in the private sector, as according to the speaker, business community is tuned to bribe and get their work done, as they seek speed in order to get allowances and permissions.

DAY 4, November 13th, 2014.



Session 1: *Environmental Sustainability in Public Procurement* by Ms. Norma Tregurtha, Senior Policy Manager, ISEAL Alliance, UK.

The first speaker landing all the way from UK deliberated upon Environmental Sustainability in public Procurement with her presentation being meaningfully titled as “Buying for Tomorrow”. She began well with providing participants with a general introduction to Sustainable Public Procurement (SPP), its importance, benefits and trends. Further acknowledging the fact that operationalizing SPP is a challenge but when it goes well, there are clear reasons for it. She also highlighted the main SPP challenge being lack of knowledge and skills, on the other hand the major driver being investments in skills and knowledge. The speaker further provided an overview of tools/ resources which can be used to support the practical implementation of SPP.

In the end, providing the case study of London Olympics and the efficient food procurement, mentioning on how the spike of peak of food demand at the mega event was turned into a milestone by maintaining high procurement standards.

Session 2: *Fraud Investigations in Public Procurement* by Mr. Mukesh Arya- IA& AS (Retd.), Managing Director and CEO at Red Flag Oversight Consultancy Services

In an interactive and lively presentation, Mr. Arya deliberated on the issue of procurement frauds, beginning with citing examples of such frauds that have happened in India like the 2G scam, Commonwealth, Adarsh and other housing scams. He listed various ingredients of fraud and corruption in the process of understanding the scenario. Mr. Arya initiated a very interactive session, by presenting situational examples in front of participants and seeking their opinion that what would they have done and it amused the participants.

In other segment, the speaker listed various anti- competitive practices and their process of investigation. Therefore, he wound up by suggesting the thinkers that they should think out of the box while not just following the linear but also the lateral picture.

Session 3: *National Manufacturing Policy Market Access & Public Procurement: The Interface* by Mr. Sandeep Verma- Author, BuyLawsIndia.com.

The session that followed was on a very unique but tricky issue, Mr. Verma, who is an IAS, Deputy Director General, Unique Identification Authority of India (UIDAI), Planning Commission, Government of India, underlined the duplicitous debate around national discrimination in government programmes, mentioning the claims against Indian public procurement policy that have been raised by some developed countries, in particular the United States. In the beginning of his session, he provided a shocking picture of the discriminating and overprotective procurement policy of the US, which doesn't seem so on the face of it. Mr. Verma also examined the incompatibility of some of the long-standing policies in developed countries with national treatment principles that form an intrinsic part of the WTO/GATT system. He further laid emphasis on the National Manufacturing Policy, outlining its objectives and aims.



Considering the market access and public procurement in light of the National Manufacturing Policy in India, he established the points of interface between them.

He concluded by suggesting an important issue for government consideration by making the Procuring Policy division the only government office with authority to issue policy directions on Public Procurement.

Session 4: e-procurement including Electronic Reverse Auction by Dr. Arvind Sahay- Professor of Marketing and International Business, IIM Ahemedabad.

The day concluded with the session on e-procurement and Reverse Auction conducted by Dr. Sahay, who is a professor at Indian Institute of Management, Ahemedabad. He introduced e-procurement in the beginning of his session. The e-Procurement System of India enables the Tenderers to download the Tender Schedule free of cost and then submit the bids online through the Central Public Procurement Portal. Dr. Sahay repeatedly emphasized on the benefits of this as the tenders may be traced by location, organization and classification. The speaker also talked about internationally emerging trends on e-procurement, mentioning various cases from Singapore, UK and US.

Further, emphasizing the need for Reverse Auction and its rationale, he stated that bidding performed in real-time via the Internet results in a dynamic, competitive process. This helps achieve rapid downward price pressure that is not normally attainable using traditional static paper-based bidding processes. His session was well received by the participants.

DAY 5, November 14th, 2014.

Session 1: The WTO's Agreement on GPA; implications for India by Dr. Anirudh Shingal- Senior Research fellow, World trade Institute, Switzerland.

Dr. Shingal in the first session of the day gave a fair picture of the World Trade Organisation's Agreement on Government Procurement and its implications on India, which is in limelight since quite some time. Borrowing from Robert Anderson, he began with stating the rationale for a GPA and its genesis. He further elaborated upon the increasing interest in GPA today saying that there is a gradually broadening membership of the agreement and prospects for its future enlargement. Further talking about the main elements of GPA, he contrasted it with the revised GPA. He also discussed key improvements in the revised version namely- explicit recognition for good governance and the fight against corruption. Towards the end, the speaker made the session more intriguing by mentioning few studies of Japanese and Swiss procurement patterns. He then analysed the major differences in India's procurement policy vis-a-vis the GPA and the costs of and benefits from GPA accession.

Session 2: Effect of Contractual Choice on Quality of Public Procurement by Prof. Ram Singh- Delhi School of Economics



The session that followed was delivered by Prof. Ram Singh, an expert from DSE. He considered the case of choosing the right contract in the process of public procurement and how it affects the quality of procured goods/services in a pragmatic and logical manner, substantiating it with empirical evidence. Considering the case of Public procurement in Infrastructure projects- railways and roads in particular, he raised a concern that the relative performance of PPP contracts is not evaluated against traditional item-rate contracts. He further made an attempt to compare relative performance of these contracts empirically in order to draw out relationship between contract type and quality of infrastructure.

He concluded by drawing out the cost differences in PPP and item-rate projects attributing the reason at project planning and construction stage.

Session 3: Legislation in India to support Pro-Probity Elements in the Public Procurement Bill by Dr. S.K.Sarkar- Former Secretary, DoPT, Government of India.

The last session that marked the end of programme was delivered by Dr. S.K. Sarkar, former Secretary DoPT and Distinguished Fellow, TERI. The Speaker discussed major factors that sustain the culture of corruption as presented by Jean Dreze and Amartya Sen in ‘An Uncertain Glory’ as: 1. Informational Lacuna, 2. Social Leniency and 3. Prosecution difficulty; further suggesting how these can be minimised. Pondering upon government’s efforts to tackle corruption since last 10 years, he underlined the features of Lokpal Bill and the Whistle Blower Act. He concluded with what we need in future by ascertaining the need for increasing mass awareness and strengthening institutions.

