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Competition and Public Procurement

The Case of Health and Primary Education Sectors

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This report assesses the regulatory and competition issues in public procurement. In the development context of India, public procurement continues to play a critical role and require greater efficiency as well as effectiveness, and infusing competition can be a principal policy tool to achieve this goal. The report looks at two sectors – health and primary education – which impact lower strata of population more directly.

1. Background of the Study:

1.1 Public procurement is the purchase of goods or services by the public sector and it generally accounts for a large share of public expenditure in a domestic economy. Public procurement[1] may be defined as, "the purchase of goods and services by governments and state-owned enterprises. It encompasses a sequence of related activities starting with the assessment of needs through awards to contract management and final payment."[2]

1.2 Existing statistics suggest that public procurement accounts, on an average, for 15% of Gross Domestic Product (GDP) worldwide, and is even higher in OECD countries where that figure is estimated at approximately 20% of GDP. Public Procurement in India constitutes 30% of the GDP. Departments like Defence, Railways and Telecom devote about 50% of their budget to procurement, which happens to be higher than the expenditure of most state governments. About 26% of the health budget is devoted to procurement. By some estimates, the annual public procurement in India would be of the order of 8 lac crore while a rough estimate of direct procurement is between Rs. 2.5 lac crore to Rs.3 lac crore.. Thus total procurement figure for India is pegged at around Rs.11 lac crore per year. Considering such huge volumes of purchase, a sound procurement system is therefore crucial for ensuring national security, safety of passengers, health of the citizen and quality of infrastructure and services.[3]

1.3 There is a threefold approach to the objectives that are envisaged as being fulfilled by public procurement: maximize public welfare by providing quality services and products, maximize growth opportunities for the private sector and ensure efficient spending of government money. Therefore, procurement policies and procedures in the public sector have a deep impact on the overall competitiveness, economic efficiency and the pace of technological innovation. Further, given the magnitude of funds involved, the public perception of integrity and competence of the government is largely influenced by the performance and integrity in public procurement.

1.4 The impact of collusion, bid-rigging and corruption is more dampening in the public sector than in private because of the important nature of social

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[1] As defined by OECD

[2] OECD Procurement Tool box. Available at: http://www.oecd.org/document/10/0,3746,en_21571361_44258691_44879818_1_1_1_1,00.html

[3] "Enhancing value in public procurement," special address by Shri Pratyush Sinha, CVC, 'Conference on Competition, Public Policy and Common men.' Available at: www.cci.gov.in/menu/speechesbypratyushsinhacvc.pdf

services that are being provided by the public sector. Apart from the loss of public funds, inefficient procurements have a detrimental impact on public infrastructure and services, therefore directly hurts the interests of the most disadvantaged in society, who rely on public provision to a great extent. In light of the aforementioned background, it is reasonable to say that effective regulation and competition will bring in greater efficiency, value for money for goods and services procured, and transparency in the public procurement processes and systems.

1.5 The study has aimed to identify and analyse the regulatory and competition issues adversely affecting the public procurement in the health and primary education sectors both at the central and state levels with a focus on the State of Rajasthan. It highlights the regulatory and competition concerns along with possible remedies to address the identified issues in public procurement systems. The outcome of study in turn would help the government agencies to procure goods and services in efficient, effective and transparent manner.

2. Methodology

(a) Coverage:

2.1 This study has covered the legal and regulatory framework governing public procurement in India with particular emphasis on public procurement related to:

- Public Health Sector and
- Primary Education Sector

2.2 To cover these two sectors, the study has considered central as well as state level procurements. The focus state in this regard has been Rajasthan. Legal and policy framework of these two jurisdictions has been studied. Then the sectoral policy-framework and laws related to public procurement have been reviewed, alongside studying tendering process through available information for the previous three years.

2.3 Three most high value tenders of each sector in State and Central Government, during the previous three years were requested. Researchers could not get all the desired information; therefore, the conclusions presented in the chapters are based either on the limited information available in the public domain or what could be procured through filing RTI applications. Alongside, attempt was made to study three most frequently occurring tenders (irrespective of value) in terms of procurement of nature of goods and services, along the time horizon of last three years for each sector in state and centre.

2.3.1 The tender documents mentioned above were analysed in the light of the well-recognised principles of public procurement, which evaluate each stage of the procurement process. The matrices below, some indicators along with their impact on competition have been presented:

Pre- tendering phase	• Needs assessment • Planning and budgeting • Definition of Requirements • Choice of Procedure
Tendering Phase	• Invitation to tender • Evaluation • Award
Post-tendering phase	• Contract Management • Order and Payment

3. Regulatory Framework Governing Public Procurement

Macro Regulatory Framework Governing Public Procurement in India

3.1 At the apex of the Indian legal framework governing public procurement is Article 299 of the Constitution of India, which stipulates that all contracts made in the exercise of the executive power of the Union of India, or by a State Government, shall be made in the name of the President of India or by the Governor of the State, as the case may be, and be executed on behalf of the President or the Governor by such person as he may direct. The Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are the major Legislations governing contracts of sale/purchase of goods and services in general.

3.2 At the federal level in India, there is no legislation exclusively governing public procurement of goods, though at the state level certain state legislatures (like Tamil Nadu) have enacted such laws (whether these laws are really capable or laws on procurement still a separate question for analysis). These are "The Tamil Nadu Transparency in Tenders Act, 1998" and "The Tamil Nadu Transparency in Tender Rules, 2000" and the Karnataka Government has legislated 'The Karnataka Transparency in Public Procurement Act, 1999".

3.3 However, comprehensive rules and directives have been put in place at the federal level in terms of (i) the General Financial Rules (GFR), 2005, (ii) the Delegation of Financial Powers Rules (DFPR), (iii) the Manual on Policies and Procedures for Purchase of Goods issued by the Ministry of Finance (Manual), (iv) similar Manual governing Procedures for Purchase of

goods/services issued by individual ministries/departments like Defence, (v) Government orders regarding price or purchase preference or other facilities to sellers in the Handloom Sector, Cottage and Small Scale Industries and to Central Public Sector Undertakings, etc. and (v) the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement. These provide the regulatory framework for public procurement by governmental instrumentalities.

3.4 The Central Vigilance Commission (CVC) is now a statutory body subsequent to the Central Vigilance Commission Act, 2003 and supervises investigations under the Prevention of Corruption Act, 1988 and the vigilance administration of the central Government.

3.5 The Competition Act 2002 prohibits any agreement which causes or is likely to cause appreciable adverse effect on competition in markets in India. Any such agreement is punishable. Bid rigging or collusive bidding is one of the horizontal agreements that shall be presumed to have appreciable adverse effect on competition under Section 3 of the Act.

3.6 The Right to Information Act, 2005 marks a benchmark in transparency and accountability with its objective of an informed citizenry for effective democracy.

3.7 Sectoral procurement procedures have been developed within the general framework keeping in mind the specific requirements of the sector. Defence Procurement Manual (DPM) 2005 and Defence Procurement Procedures, 2005 provide a comprehensive guideline including an offsets policy, an integrity pact and timetable for procurement. The aim is to increase transparency, to provide clear guidelines and remove ambiguities and to speed up the process of procurement.

4. Public Procurement in Health Sector

Health sector in India- An Overview

4.1 In the Indian perspective the provision of health care by the public sector is a responsibility shared by the State Governments, Central Government and local governments. General health services are the primary responsibility of the states with the Central Government focusing on medical education, drugs, population stabilisation and disease control. The National Health Programmes of the Central Government related to reproductive and child health and to the control of major

communicable diseases like malaria and tuberculosis have always contributed significantly to state health programmes[4].

Public Spending on Health

4.2 It is estimated that between 20-50% of the government health budget is used to procure drugs. Preventing and controlling corruption in procurement is, therefore, a determining factor in policy and project efficiency[5]. In Indian context about 26% of the health budget is devoted to procurement. A sound procurement system is therefore crucial for ensuring national security, safety of passengers, health of the citizen and the quality of infrastructure and services.[6]

4.3 Currently the public health system in India spends about Rs. 6000 crores (0.1% of GDP) for procuring drugs. In the event of India providing Universal Health Coverage, an additional medicine purchase of amount Rs. 24,000 crores would be required by the public health system. That means India need to spend 0.5% of its GDP on procuring medicines alone in the event of universal health coverage (total spending on healthcare at present is 1.2% of GDP). This makes public health procurement a crucial exercise.

4.4 At the central level, Directorate of Procurement, under Ministry of Health and family Welfare is in charge for procurement and supply of the drugs for the vertical program. The directorate is supported by technical support unit. Along with assisting the Government of India in procurement supply chain management of drugs and equipments for the vertical program, they also have a mandate of enhancing the capacity of the central and state government on the supply chain management and bringing transparency in the process.

Health Indicators of Rajasthan

4.5 The Total Fertility Rate of the State is 3.21. The Infant Mortality Rate is 63 and Maternal Mortality Ratio is 388 (SRS 2004 - 2006) which are higher than the National average. The Sex Ratio in the State is 909 (as compared to the goal of 917 for the XIth five year plan period for the state). Comparative figures of major health and demographic indicators are as follows: [7]

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[4] See annual report of Ministry of Health and Family Welfare, Government of India, available at http://www.mohfw.nic.in/showfile.php?lid=121

[5] Corruption in Public Procurement, available at http://www.u4.no/themes/procurement/procurementintro.cfm

[6] Enhancing value in public procurement: Special address by Shri Pratyush Sinha, CVC, Conference on Competition, Public Policy and Common Men. Available at http://www.cci.gov.in/menu/speechesbypratyushsinhacvc.pdf

[7] Available at: http://mohfw.nic.in/NRHM/Health_Profile.htm#raj

4.6 The data reveals that practically in respect of every indicator, the State is much behind the target to be achieved by the end of the XI Five Year Plan. The ratio of the rural and urban population is 77:23 and the growth rate of population, being 20%, is higher than the rate of growth of population for the country.

Regulatory and Policy Framework of Public Procurement in the Health Sector in India

4.7 Timely supply of drugs, medical supplies and equipment of good quality, which involves procurement as well as logistics management, is of critical importance in any health system. Legal, policy and regulatory environment are recognized as providing an important foundation for public procurement in the health sector. An efficient procurement policy would have an integrated approach starting from (i) preparation of an essential drugs list, (ii) assessment of the quantity of drugs needed, (iii) quality assurance from suppliers, (iv) procurement process, (v) supply chain management, and (vi) prompt payment to suppliers.

4.8 The regulatory system as far as public procurement in the health sector is concerned has been relatively weak. In India, Central and State Government institutions follow one or more of these arrangements for public procurement:

- Central Rate Contract System,
- Pooled Procurement either by the government or through an autonomous corporation,
- decentralized procurement, and
- local purchase.[8]

(i) Central Rate Contract System: In Central Rate Contract System, drugs are financed, procured and distributed by the government, which is the owner, funder and manager of the entire system. Selection, procurement and distribution are all handled by a unit within the health ministry. It is preferred drug procurement and distribution system by central government for MoHFW.[9]

[8] Sakthivel S, 'Access to Essential Drugs and Medicines- WHO India.' Available at: http://whoindia.org/LinkFiles/Commision_on_Macroeconomic_and_Health_Access_to_Essential_Drugs_and_Medicine.pdf

[9] A country level report on the pharmaceutical sector in India Part One: Institutions involved in pharmaceutical regulation. April 2008. A report commissioned by DFID, UK

(ii) Pooled Procurement: Autonomous corporations are constituted as parastatals, either under the ministry of health or as independent organization with a board of directors including representation from other (than health) government ministries. The board is autonomous in running the agency but reports to a higher official from the ministry of health who may be involved in the appointment of the chairman of the board or the executive officer. The purpose of establishing an autonomous supply agency is to achieve the efficiency, flexibility, transparency and accountability in the system.

The pooled procurement system uses a two-stage tender system. This ensures that only those companies that are capable of supplying products of adequate quality receive orders. The tender process is limited to companies that fulfill the technical criteria. Through a two-envelope system (technical bid and price bid), the drug purchase committee of the society is able to ensure that the purchases are made from companies complying with the Good Manufacturing Practices.

The Tamil Nadu Medical Services Corporation (TNMSC) is a widely referred example. TNMSC was set up by government of Tamil Nadu as autonomous corporation in July 1994 under the Companies Act of 1956, for the purpose of supplying the essential drugs and services. The success of the TNMSC lies in its centralized drug procurement and distribution system supported by a computerized system of drug management. The TNMSC has adopted a 'two envelope system' (technical bid and price bid being sent in separate envelopes) which ensures a speedy and transparent mechanism in procurement of drugs.

(iii) Decentralized Procurement: Decentralized system is followed by Karnataka and Rajasthan. In the former, a major part of drug procurement, accounting for 60%, is sourced by zila panchayats (local governments) at the district level while the remaining 40% is sourced by government medical stores. In Rajasthan, the procurement of drugs, equipments and supplies are carried out by the Store Purchase Organization (SPO) under the Directorate of Medical and Health Services (Center for Pharmaceutical Management, 2003). The SPOs are entrusted with the responsibility of finalizing the rate contract for the majority of drugs and equipments. The rate contracts are finalized as per the General Finance and Accounting Rules for the State. Also, preferential treatment is also provided to drugs manufactured by the State's

Small Scale Industries/Other Local Units of the State. Tenders are invited only for those drugs not supplied by Public Sector Undertakings and Small Scale Industries. The state government negotiates drug prices for the entire state through a rate contract with manufacturers. Health facilities and district warehouses can then order these drugs as needed throughout the contract cycle directly from the manufacturer.

4.9 The present piecemeal regulatory approach for medical devices in India results in application of redundant rules. In certain cases, product registration and manufacturing standards intended for drugs are applied to the manufacture of devices - e.g. it is insisted that an expiry date be given on certain medical devices, whereas this is not required for such products. This also results in lack of clarity and transparency about regulation. There are also problems pertaining to multiple levels of government authority involved in enforcing the guidelines, as well as inconsistent interpretation and application of the regulatory guidelines by customs officials at the ports, state drug controllers, and officials within CDSCO. This results in a prolonged and cumbersome regulatory pathway, especially for new product.

Credibility of drug regulation and impact on competition in procurement of drugs

4.10 Drug regulation covers many functions, namely:

- Marketing approval of new medicines based on safety and efficacy studies,
- Licensing and monitoring of manufacturing facilities and distribution channels,
- Post-marketing adverse drug reaction (ADR) monitoring,
- Quality control (QC),
- Periodic review and re-evaluation of approved drugs,
- Control of drug promotion
- Regulation of drug trials.

4.11 While most functions pertaining to drug regulation come under the jurisdiction of Central Government and are carried out by the Central Drug Standards Control Organization (CDSCO), others viz. licensing and monitoring of manufacturing units and distribution channels; quality control etc. are carried on by state level drugs authorities under the administrative control of state governments.

4.12 Drugs and Cosmetics Act 1940 and Rules 1945, Drugs & Magic Remedies (Objectionable Advertisements) Act 1954 as amended from time to

time are the principal legislations that govern the functioning of CDSCO and state drug authorities.

4.13 A main problem in effective execution of regulatory functions as noted by the Parliamentary Committee[10] is lack of staff. Notably, the pharmaceutical industry is growing at the rate of approximately 10% per year. However, the workload of CDSCO is increasing at the rate of approximately 20% per year while there is no corresponding rise in the manpower and infrastructure to meet the demand of the industry and discharge mandatory functions. As per the Report of the Parliamentary Committee, there are four Deputy Drugs Controllers and five Assistant Drugs Controllers in Headquaters.

4.14 Further, the Report of the Parliamentary Committee mentions that condition of state drugs regulatory systems is a matter of serious concern. This issue has to be seen from the quantity as well as quality of personnel points of views. The Mashelkar Committee in 2003 had recommended one drugs inspector per 50 manufacturing units and one drugs inspector per 200 sales/distribution outlets for effective implementation of functions assigned to them. It was also informed that there were approximately 600,000 retail sales outlets and around 10,500 manufacturing units in the country, which, require just over 3,200 Drugs Inspectors. However, in reality, there were only 846 Drugs Inspectors in place against 1,349 sanctioned posts in States. Secondly, current professional skills of the available drug inspectors also call for consistent capacity building. It may be added here that main problems faced by the States Drug Authorities are: inadequate infrastructure, shortage of drugs inspectors, non-existence of data bank and accurate information, non-uniformity of enforcement among the states and lack of pro-active interaction between the States particularly, in connection with investigations relating to drugs found 'Not of Standard Quality'. All these factors may have resulted in adverse public perception about the credibility of regulatory mechanism.

Observations from the Analysis of Tender Documents

4.15 Three Tender Cases each were received from Ministry of Health and Family Welfare, Government of India and Public Health and Elementary Education Department of Rajasthan Government through RTI for the purpose of scrutiny. As may be seen above details of procurement proposed under said tender has been provided along with processes followed. Detailed analysis of all the tender case has been done to ascertain competition concerns. It is found that:

[10] Department Related Parliamentary Standing Committee on Health and Family Welfare (2012), Fifty Ninth Report on the Functioning of the Central Drugs Standard Control Organisation (CDSCO)

i. Procedure of Rate Contract as laid down in DGS&D manual has been followed for procurement of Drugs and Medicines, Vaccines and Medical Equipment.

ii. Pre-Bid Meetings have been conducted to clarify doubts and issues and incorporate changes in the Tender documents wherever considered necessary.

iii. Advertised Tenders with Two Bid System to ward off unresponsive and technically unsuitable bids have been invited in all the cases to ensure maximum participation of prospective bidders.

iv. Last Purchase rates and Rates obtained in the current Tenders have been analyzed to detect cases of Bid rigging and cartel formation and other malpractices.

As may appear from above four points that design of tender documents have been as per existing norms of public procurement and procuring entities seem to aware about competitive process and they claim to have taken safeguards to cut down any attempt of anticompetitive conduct such as bid rigging etc.

Specifically looking into cases some issues may be highlighted from the competition assessment aspect. In Tender Enquiry no.S.12012/12/2010-Supply/RC/Condoms, procurement of condoms worth Rs.1000 Cr. is proposed by a two bid system. As per details there is only one competition concern which requires consideration i.e. whether system proposed by tender document thwarts competition and creates an entry barrier or disallows bidders to fairly participate in the bidding process or technical specifications are designed to favour few suppliers etc. on prima facie assessment what may be stated that no apparent anomaly vis-à-vis competition may be seen, however, if procurement system does not have a global appearance it may be concluded that global competitive bidding could have provided better competitive prices. It may also be noted that the tender document provided for Purchase preference, in terms that procurement shall be subject to the purchase preference policy of the Government of India applicable for the Public Sector Undertakings of the Government of India. Such clear preferences may not be considered in consonance with competition mandate for the reason that preferences in procurement would definitely dilute competition and create an entry barrier for a number of private producers.

Such approach has been consistently seen by and large in all the high value procurement tenders, which shows that procurement processes have not become competition compliant, however, they aim to be transparent and competitive.

5. Public Procurement in Primary Education Sector

Primary Education System in India- An Overview

5.1 In recent past, India has made a huge progress in terms of increasing primary education enrolment, retention, regular attendance rate and expanding literacy to approximately two thirds of the population. Free and compulsory education to all children up to the age fourteen is constitutional commitment in India. The Parliament of India has recently passed Right to Education Act through which education has become fundamental right of all children of age group 6-14 years. This has been done in pursuance of The 86th Constitutional Amendment Act, 2002 which made education a Fundamental Right for children in the age group of 6-14 years by providing that "*the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*" The country is yet to achieve the elusive goal of Universalisation of Elementary education (UEE), which means 100 percent enrolment and retention of children with schooling facilities in all habitations. It is to fill this gap that the Government has launched the Sarva Shiksha Abhiyan in 2001, one of the largest such programmes in the world.

5.2 Public Expenditure on Education in India has been 3.77% of GDP in the year 1999-2000 and 3.74% in the year 2003-04, this may suggest that the total amount spent on procurement in primary education is not so high.

Primary Education in Rajasthan

5.3 The elementary education sector has been given prime importance in the XIth Five Year Plan with stress on the successful implementation of Sarva Shiksha Abhiyan. Continuing the trend of the tenth plan the eleventh plan also proposes an outlay of about 28.33% of the total plan outlay to the social and community service sector.

5.4 However, a review of the existing infrastructure facilities in the state for elementary education does not present a very encouraging picture. The number of primary schools with classrooms in good condition has gone down because many of them have been upgraded to upper primary school. Hence the schools with good classrooms at upper primary level now stands at 136535 (in the year 2008-09) as compared to 22892 in the year 2005-06. Classrooms requiring major repairs are 28575 (both in PS and UPS). This is quite a large number considering the availability of enough funds for this purpose. One can visualize the plight of children studying in such non-building schools. Only 30021 (37.20%) schools have pucca boundary wall and 17.66% schools do have broken ones. 2.41% schools have wire fencing. What, however, is amazing is the fact that 34471 (42.71%) schools have no building wall at all,

thus exposing the school children both to man-made and natural hazards. Coming to facilities directly affecting school children, one finds that toilets exclusively for girls have not been provided in 15050 (18.64%) of schools, while drinking water facility is non-existent in 7917 schools. 15050 schools do not have any kind of toilets. The absence of electricity in a vast majority of schools is a serious matter, since this has an adverse impact on children's attendance in summers. Computers, though now considered to be a symbol of technological progress and an asset for innovative teaching learning processes, are available only in a miniscule number of schools. It may be stated that computers do not operate in the absence of electricity, and this unfortunately is available only in 16.83% schools. In terms of facilities, although, one may state, that there has been considerable progress, yet large gaps exist particularly in providing toilets for girls, electricity and computers. [11]

Regulatory and Policy Framework

5.5 The role of universal Elementary Education (UEE) for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since the inception of our Republic. With the formulation of NPE, India initiated a wide range of programmes for achieving the goal of UEE through several schematic and programme interventions, such as Operation Blackboard, Shiksha Karmi Project, Lok Jumbish Programme, Mahila Samakhya, District Primary Education Programme etc.

5.6 Currently, Sarva Shiksha Abhiyan (SSA) is implemented as India's main programme for universalising elementary education. SSA interventions include opening of new schools and alternate schooling facilities, construction of schools and additional classrooms, toilets and drinking water, provisioning for teachers, periodic teacher training and academic resource support, text books and support for learning achievement.

5.7 **Procurement in SSA**: The implementation of the national programme of Sarva Shiksha Abhiyan (SSA) entails procurement of textbooks, teaching learning equipment, teaching learning materials, furniture, school equipment, materials required for teacher's training, office equipment, computers and their accessories, improvement of school facilities, construction of primary and upper primary school buildings, additional class rooms, toilets, drinking water facilities, boundary walls, separation walls, electrification, construction of BRCs/CRCs, maintenance and repair of school buildings, construction of SIEMAT, hiring of experts for specific tasks etc. While the village/school-

[11] Available at:
http://www.planning.rajasthan.gov.in/Mid%20Term%20Apraisal%20Book.pdf

based structures shall decide the best way of procurement in connection with up-gradation, repair and maintenance of schools and teaching learning equipment, the SSA framework has not specified the methods for procurement at school, CRC, BRC, district and State level. It was decided by the EE Bureau that procurement under SSA may be carried out as per the respective State Government procedures/Rules. However, in case the State Implementation Society is already following a procedure under DPEP, the same may be adopted by it for procurement under SSA also. The choice of the procurement procedure i.e., whether State guidelines or the existing DPEP procedures, may be decided by the Executive Committee of the State Implementation Society. This choice may be exercised by the Executive Committee either for the entire procurement to be done by the Society in toto or for each item of procurement on a case-to-case basis.

5.8 In SSA, goods, works and services required for the implementation of the programme will be procured at (a) school/community level, (b) CRC/BRC level, (c) district level, and (d) State level. The procurement procedures as laid down in the State Government Rules or the Panchayati Raj Institutions Rules as applicable at each level shall be normally followed for the procurement of civil works, goods and services in SSA.

5.9 While resorting to procurement under SSA, it should be kept in mind by the programme implementing authorities that specific budget provision should be available for meeting the expenditure in the financial year in which it is to be incurred. Bulk requirement of stores for State Society office and district level offices should be assessed at the beginning of the financial year and action for procurement should be initiated in accordance with the purchase procedure applicable under SSA. Purchase of office equipment and furniture should be in economic lots keeping in view the annual requirements. Purchases must be made to the best advantage of the programme after comparison of competitive prices.

5.10 The preparation of a procurement plan is an essential requirement. The procurement plan covering civil works, equipment, goods, vehicles and consultancy services and resource support shall be prepared on a firm basis for first year of the programme, and on a tentative basis for the subsequent years. Procurement plan shall be prepared every year by the State / UT. The procurement plan schedule shall be prepared contract wise. The method of procurement shall be based on the value of the contract.

5.11 The limit applicable to the particular procurement procedure shall be strictly adhered to. In case the procurement activity could not be completed in a year as per the plan and the same is to be carried over to the next year, a

reference to this effect should be made to the EE Bureau, GOI stating the reasons for not procuring the items in the particular year. It should also be mentioned to the Bureau that except for the carry forward of the procurement, all other procedures remain unchanged.

6. Conclusion and Recommendations

i. Analysis of governance structures and regulatory frameworks highlighted lack of communication, coordination, cohesion and coherence amongst various institutions/ministries that have an effect on access to medicines in the country. Key informants also voiced their concern regarding lack of policy environment to offer a road map to ensure commodity security in the country.

ii. The public procurements in many departments and ministries suffer from serious delays, indecisiveness, and frequent change of specifications, lack of accountability, inadequate competition, and acceptance of goods of inferior quality. Public procurement is the government activity most vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction between the public and the private sectors. Public procurement in India has been characterised by the malpractice of cartel formation accompanied by collusive bidding and bid rigging. Suppliers/bidders can eliminate competition in public procurement in many simple ways, for example:

- a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer;
- a competitor agrees not to bid or to withdraw a bid from consideration; and,
- a competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.

iii. Also, lack of a scientific mechanism and system to generate evidence on the type of drugs produced, quantity produced, prices of production, drugs consumption and other related indicators limits governments capacity for evidence based policy making. Another recent trend is that of collusion between medicine manufacturers, super-speciality hospitals, pharma-retail chains and health insurance agencies. This may have negative impact on availability of affordable medicines in the country in near future.

iv. Lack of robust procurement and supply chain systems hampers the availability of medicines to frontline facilities as well as leads to leakages and inefficient procurement practices incurring financial losses.

v. Health spending in India at around 4.8% of GDP is not considered at par with spending in Organisation for Economic Co-operation and Development member countries. Therefore, while there has been considerable success in developing physical infrastructure and coverage of primary health provision, significant challenges remain across the country in health care provision, especially in terms of accessibility, coverage, rural areas, ineffective management, and inadequate quality and availability of health care professionals. The problem can be addressed by strengthening accountability framework in government. Accountability is at once a key deterrent to corruption and collusion and a pre-requisite to procurement credibility.

vi. Education spending in India is estimated at about 4.1% of GDP. While there has been considerable progress in enhancing access and building the school network over the recent past, significant gaps continue to hinder quality education across the country. Gaps between boys and girls, rich and poor, and rural and urban areas remain.

vii. It would not be out of place to mention about launch of a pan India scheme/intervention of the Central Government in the context of drugs procurement, which, as per news reports, may be announce by the Government, whereby there will be free supply of essential medicines to all those who seek healthcare in public health establishments anywhere in India. It would be wholly funded by GOI. Procurement for this scheme would be (a) only of generic-generic and unbranded generic medicines, (b) only from national essential list and state list of essential medicines, where applicable, and (c) procurement would be in bulk and directly from manufacturer.

viii. The Tamil Nadu model of drug procurement is proposed to be replicated by the Central Government. In order to implement the proposed scheme, money would be given by Central Government to State Governments to procure drugs through a MOU requiring the latter to have certain necessary systems in place, as pre-condition. This is being done to avoid misuse. For instance, it would be mandatory for state governments to form a corporation for the purpose of procuring drugs and having proper staff to do inventory etc. Main concern for GOI is leakage due to corruption, particularly at the PHC level. At present the GOI is thinking towards having a community oversight/social audit mechanism to check such leakage.

ix. It is pertinent to note that like TN and Delhi models, GOI for this scheme also proposes certain technical criteria with respect to minimum turnover (e.g. Rs.25 crore) and operational timeframe (e.g. 3 years) on part of the suppliers.

This is being done in order to obtain quality generic drugs with certainty in their supply.

x. It is true that in India we have a plethora of domestic manufacturers of medicine hence we may not be required to incentivise the new comers. But would we like to maintain this concept of turnover and minimum operation as criteria for high-end medical devices? Would we not like to incentivise new comers, viewing the scanty presence of high-end medical devices manufacturers in India? Therefore we need to review the concept of putting turnover and operation time as criteria for firms to qualify for bidding to supply goods and services to government, without compromising on quality and sustainability of such supplies.

xi. A major deficiency in the public procurement system in India is the confusion created by the existence of multiple procurement guidelines and procedures issued by multiple agencies. There is neither a single comprehensive public procurement standard nor a single nodal agency to deal with public procurement policy. There is an urgent need to put in place a comprehensive public procurement standard in India with a single authority to handle public procurement issues. The Government has already presented the Public Procurement Bill in the Parliament. One enacted, the proposed Act is expected to sort out many issues raised by the Study.

xii. **Impact of corruption and other mal-practices:** Bribery and corruption are frequently associated[12] with other crimes, such as money laundering, accounting fraud, tax evasion and extortion. The public procurement process can also be abused through collusion and corruption. From the interactions with various government officials and private companies it emerged that presence of corruption and other mal-practices results in lack of participation by brand name conscious companies or the companies which do not wish to engage in corrupt practices. In terms of competition it means that presence of corruption and other mal-practices exerts a market distorting impact by way of reducing the number of potential suppliers. This intern means that companies which participated a tender greater opportunity to: a) collude and raise the prices, and (b) supply lower quality goods but at a higher price. Therefore, it is reasonable to say that corrupt practices distorts markets and undermines trust in government and institutions.

xiii. **Impact of procedural delays -** Interactions with various experts reveal that tenders are concluded either at a short notice or after

[12] OECD (2007), Bribery in Public Procurement - METHODS, ACTORS AND COUNTER-MEASURES, ISBN 978-92-64-01394-0

excessive delays. In the case of excessive delays, it adversely impacts the price quote and the shelf life of the drugs. After the commencement of tender proceedings the interested suppliers taken in to their production account and accordingly choose to produce the demanded good. However, at the time of actual supply considerable time may have laps. This means that the drug, which comes with a predetermined expiry date, has to be consumed in a short span of time. In addition to the temporal issue, the time lag also has the potential to adversely affect the cost of supplying drugs. When a potential drug supplier takes this in to account and raises the price quote, it fails to meet the L1 criteria stipulated by the GFRs. **Such a scenario may significantly reduce the number of suppliers in effect**.

xiv. Information technology (IT) has the potential to contribute to reducing risks associated with corrupt practices in public procurement. IT can limit face-to-face contacts between suppliers and procurement sides, allow the efficient exchange of information to a large number of potential suppliers at low cost, increase transparency of forthcoming and current tender opportunities. In India, the use IT in public procurement is rising but needs to further leveraged.

xv. An issue regarding timely availability of procured goods (text books and medical supplies for the purpose of this report) was also raised during consultation with experts. However, this was outside the scope of the research, which sought to focus only on impact of competition on the procurement process and not the logistics of distributing the procured goods.

xvi. Besides a good framework of policies and procedures, 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 organization has created a specialized cadre for this purpose; even in these organizations inefficiencies are galore. There is a need either to have qualified staff handling procurement or to provide adequate professional training to convert procurement officials into procurement managers.