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Competition  
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**BUSINESS RECOMMENDATIONS FOR  
PUBLIC PROCUREMENT POLICY IN INDIA  
WHITE PAPER**



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## ACRONYMS

CAG	Comptroller and Auditor General of India
CEGET	Centre of Excellence for Governance, Ethics and Transparency
CPSEs	Central Public Sector Enterprises
CUTS	Consumer Unity & Trust Society
CVC	Central Vigilance Commission
DFPR	Delegation of Financial Power Rules
e-procurement	Electronic-procurement
GDP	Gross Domestic Product
GFR	General Financial Rules
GPL	Government Procurement Law (China)
GPA	Government Procurement Agreement
IEM	Independent External Monitor
LCBS	Least Cost Based Selection
MoF	Ministry of Finance
MSME	Micro, Small and Medium Enterprises
OECD	Organisation for Economic Co-operation and Development
PPB	Public Procurement Bill
PPP	Public Private Partnership
QCBS	Quality and Cost Based Selection
SME	Small and Medium Enterprises
TL	Tendering Law
UK	United Kingdom
UK PCR 2015	United Kingdom – Public Contracts Regulations 2015
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCITRAL	United Nations Commission on International Trade Law
GCNI	Global Compact Network, India
UNODC	United Nations Office on Drugs and Crime
WTO	World Trade Organisation

## Key Business Recommendations Explored in the White Paper

- 1) COVERAGE: WHO AND WHAT TO COVER?
- 2) COMPETITION: METHODS OF EVALUATION AND AWARD OF BIDS
- 3) PROCUREMENT OF PROPRIETARY ITEMS, SOLE SUPPLIERS AND SINGLE TENDERS
- 4) TRANSPARENCY: RELEVANT PUBLIC INFORMATION AND LEVEL PLAYING FIELD
- 5) MARKET ACCESS: DOMESTIC VS. NON-DOMESTIC PLAYERS
- 6) GRIEVANCE REDRESSAL: FORUM FOR BIDDERS/ PROSPECTIVE BIDDERS
- 7) PROBITY: PENAL PROVISIONS AND COMPLIANCE WITH THE ACT
- 8) SUSTAINABLE PUBLIC PROCUREMENT: INTEGRATING ENVIRONMENTAL NORMS

## Executive Summary

Procurement is an activity of finding, acquiring, buying goods, services or works from an external source, through tendering or competitive bidding process. It is an integral part of governance and financial management system of any country and it accounts for a substantial amount of global and national expenditure. In India, estimates of public procurement vary between 20 percent of GDP (WTO estimates) to 30 percent of GDP (OECD estimates). Its importance can be highlighted by the fact that some of the important ministries of the Government of India such as the Railways, Defense and Telecom devote almost 50 percent of their budget to procurement. As a result, a properly designed and implemented procurement law is long overdue that could improve the financial management and bring large financial and governance benefits in the short and long run.

The Centre of Excellence for Governance, Ethics and Transparency (CEGET) at UN Global Compact Network, India, (GCNI), which is a network of business enterprises who subscribe to the 10th UN Global Compact Network Principle, i.e. businesses should work against corruption, has been taking keen interest in developments related to the regulation of public procurement in India as part of its remit. In April 2012, GCNI had organized a National Consultation on Transparency and Anti-Corruption Measures in Procurement in India, in partnership with

the United Nations Office of Drug and Crime (UNODC).

When the present government re-initiated interest in public procurement, it appeared from the trend of discussions at the National Consultation held with stakeholders by Ministry of Finance in July 2015 that the focus was on re-orienting the approach to public procurement with a view to introducing 'ease of doing business', which is considered essential by government for revitalizing the Indian economy.

Guided by this re-orientation, CEGET identified eight core areas for seeking business recommendation that were arrived at through research and consultation, and shared with relevant stakeholders in the Government. The eight core areas are: Coverage, Competition, Procurement of Proprietary Items, Sole Suppliers and Single Tenders, Transparency, Market Access, Grievance Redressal, Probity and Sustainable Public Procurement.

As this White Paper goes into print, CEGET is happy to share that a number of our recommendations are reflected in the General Financial Rules 2017. This is a welcome beginning, in the journey towards a consolidated Public Procurement Bill, which was the unanimous recommendation of business and is part of India's global commitment.

## BACKGROUND

Procurement is an activity of finding, acquiring, buying goods, services or works from an external source, through tendering or competitive bidding process. It is an integral part of governance and financial management system of any country, and it accounts for a substantial amount of global and national expenditure. In 2013, Governments spent, on an average, 29 percent of the total general government expenditure and 12 percent of GDP (OECD countries), on public procurements.<sup>1</sup> In India, estimates of public procurement vary between 20 percent of GDP (WTO estimates) to 30 percent of GDP (OECD estimates).<sup>2</sup> Its importance can be highlighted by the fact that some of the important ministries of the Government of India such as the Railways, Defense and Telecom devote almost 50 percent of their budget to procurement. As a result, a properly designed and implemented procurement law is long overdue that could improve the financial management and bring large financial and governance benefits in the short and long run.

Since 2010, when the Central Government of India got mired in controversy over the large scale public procurement irregularities, the subject of public procurement has been in the eye of the public. To restore confidence in governance, the Government of the day established a Group of Ministers on corruption, which further set up a Committee on Public Procurement, under the Chairmanship of Mr. Vinod Dhall. Mr. Dhall also happened to be the first Chairman of the Competition Commission of India. The Committee submitted its report to the government in 2011, which highlighted the abuse of public procurement regulations and recommended an overarching public procurement law containing the necessary remedial measures.

The Public Procurement Bill, 2012, was brought into existence based on the recommendations of the Dhall Committee report (2011). This was later introduced in the Parliament in May 2012, which

lapsed with the dissolution of the 15th Lok Sabha. The change in leadership in federal government in India in 2014 led to the renewal of interest in the subject of public procurement. As a result, public consultations were held by the Department of Expenditure, Ministry of Finance, for amended public procurement legislation in mid-2015.

## INTRODUCTION

In view of the growing importance of the process of procurement, the Centre Of Excellence for Governance, Ethics and Transparency (CEGET) at UN Global Compact Network, India, (GCNI) which is a network of business enterprises who subscribe to the 10th UN Global Compact Network Principle, i.e. businesses should work against corruption, has been taking keen interest in developments related to the regulation of public procurement in India as part of its remit. In April, 2012, GCNI had organized a National Consultation on Transparency and Anti-Corruption Measures in Procurement in India, in partnership with the United Nations Office of Drug and Crime (UNODC).

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## PUBLIC PROCUREMENT HIGHLIGHTS IN INDIA

The formulation of the Public Procurement Bill (PPB) 2012, shows that it is highly influenced by the international laws and practice, like the UNCITRAL Model Law on Public Procurement 2011 and the WTO's plurilateral Government Procurement Agreement (GPA), both of which promote and involve best practices in terms of non-discrimination and fair competition

<sup>1</sup> OECD (2015), "Size of public procurement", in Government at a Glance 2015, OECD Publishing, Paris. Available at: [http://www.oecd-ilibrary.org/governance/government-at-a-glance-2015/size-of-public-procurement\\_gov\\_glance2015-42-en](http://www.oecd-ilibrary.org/governance/government-at-a-glance-2015/size-of-public-procurement_gov_glance2015-42-en)

<sup>2</sup> India: Probity in Public Procurement, UNODC Publishing. Available at: <https://www.unodc.org/documents/southasia/publications/research-studies/India-PPPs.pdf>

to facilitate international trade. PPB 2012 is also inspired by the UN Convention Against Corruption (UNCAC), ratified by India in 2011

and the Transparency International's Model Law on Integrity Pacts, whose focus is on probity and

## HIGHLIGHTS OF THE PUBLIC PROCUREMENT BILL, 2012

- The Bill was introduced in the Lok Sabha on May 14, 2012 by the Minister of Finance.
- The Bill seeks to regulate and ensure transparency in procurement by the central government and its entities.
- It exempts procurements for disaster management, for security or strategic purposes, and those below Rs 50 lakh. The government can also exempt, in public interest, any procurements or procuring entities from any of the provisions of the Bill.
- The government can prescribe a code of integrity for the officials of procuring entities and the bidders. The Bill empowers the government and procuring entity to debar a bidder under certain circumstances.
- The Bill mandates publication of all procurement-related information on a Central Public Procurement Portal.
- The Bill sets Open Competitive Bidding as the preferred procurement method; an entity must provide reasons for using any other method. It also specifies the conditions and procedure for the use of other methods.
- The Bill provides for setting up Procurement Redressal Committees. An aggrieved bidder may approach the concerned Committee for redressal.
- The Bill penalizes both the acceptance of a bribe by a public servant as well as the offering of a bribe or undue influencing of the procurement process by the bidder with imprisonment and a fine.

Currently there is no single union law specifically governing procurement at the Centre. However, as part of the financial management, procurement of goods and services fall under the ambit of Ministry of Finance (MoF), whereby under the General Financial Rules (GFR), 2005 and Delegation of Financial Power Rules (DFPR), 1978, it lays down generic guiding principles, which have by and large been adopted in their own departmental manuals by different procuring agencies of central government in India, like the Railways, the Medical Supplies Depot and so on. MoF has also come up with Manuals on Policies and Procedures for the Purchase of Goods, Works and Consultancy in conformity with the GFR, 2005. The Central Vigilance Commission (CVC), the apex vigilance institution, also lays down guidelines on tenders, procurement of works and goods and services.

Though GFRs are considered as the main rules of the governing public procurement in India, there is a plethora of guidelines, where each government department/sector has its own procurement manuals, and there are court rulings on the subject and observations of the CAG, as also preferential market access policies of different government departments. These guidelines and rulings are not always in harmony with each other, thus leading to confusion, which gives an opportunity to procuring entities to interpret rules subjectively, often with an eye to personal gain rather than the public interest. The guidelines issued by the CVC are stringent and at times curtail the operational freedom to explore the flexibility provided within the GFRs. However, in many cases, CVC guidelines complement GFRs, which includes inter alia, mandating/advocating e-procurement, integrity pact and Independent External Monitor (IEM).



## BUSINESS RECOMMENDATIONS

CEGET, in concurrence with the view of the government, focused on evaluating and recommending modifications to the Public Procurement Bill, 2012, from the perspective of facilitating conduct of ethical business in India. An extensive analysis of the PPB 2012, in the light of global laws and best practices, synergized with the advice of other experts on the subject, was prepared. The resultant 'Working Paper' was further deliberated at the 'National Consultation on Business Inputs on Public Procurement' held on 6 June, 2016 at New Delhi, which was attended by business stakeholders (especially from procurement department) and business law experts.

The present White Paper has drawn its inputs from the National Consultation and follows the thematic arrangement of the discussion. The core issues around which the recommendations are factored are:

### 1. COVERAGE: WHO AND WHAT TO COVER?

The bill exempts procurements for disaster management, for security or strategic purposes, and those below Rs 50 lakhs. In relation to the exempted sectors, it was clarified that defense procurement is governed by the Defense Procurement Manual and the emergency procurement is limited only to emergency, as defined under the Disaster Management Act, and such exemptions are aligned with the international practice.

**Recommendation:** The Consultation on the other hand, recommends that this threshold level be removed. Both private and public sector business feel that there should not be any monetary threshold limit in the public procurement law. This is necessary as small procurements could multiply and add up to or equal large (over threshold limit) procurements, leading to the same risk of corruption. There was a consensus on the non-

applicability of the Procurement laws on the exempted sectors.

### 2. COMPETITION: METHODS OF EVALUATION AND AWARD OF BIDS

Fair competition is the guiding spirit of public procurement policy and law. Thus, PPB 2012 is correct in enshrining open competitive bidding as the preferred mode of tendering (under Clause 30 PPB) and necessity for justification must be there if other tendering modes are used.

#### i. Tendering mode

It was felt that a lacuna exists in the tendering modes, and there is no appropriate bidding mode to meet a situation involving complex types of procurement, where the procurer cannot in advance specify the technical, financial or legal aspects of a project. Therefore, inputs from the private sector were required for conceiving and formulating the project. In such situations, the State Governments have been resorting many a times to the 'Swiss Challenge' mode. The **Swiss challenge** method is a method in which "an unsolicited proposal for a (government) project is received and allows third party to challenge the original proposal through open bidding and then lets the original proponent counter-match the most advantageous/most competitive offer" [vide Rule 79-A, Rajasthan Transparency in Public Procurement Amendment Rules, 2015]. It is believed that the Government of India is either incorporating or plans to incorporate this mode for the development and modernization of the railway stations in India. However, due to information asymmetry in the Swiss Challenge mode, the initial proponent is overly favoured, which results in them winning the bid or contract. Thus, it may be safe to state that the Swiss Challenge is not the fairest mode of tendering in complex types of public procurement.

**Recommendation:** Businesses proposed that the '**Pre-Bid Conference**' mode already being used in India for procurement in complex technical bids, in which the specifications are unknown in advance by the procuring authority, is a more effective mode. In this mode, the procuring agency

starts a dialogue with qualified interested bidders simultaneously to identify the best means to meet the requirements of such a complex procurement. During the dialogue process, the procuring agency ensures equality of treatment among all participants. Caution is to be maintained that the procuring agency does not provide any information in a discriminatory manner, which may give some participants unfair advantage over others. When the procuring agency has gathered the necessary information on the subject matter of the proposed procurement, bids are invited based on discussed specifications. Afterwards, the award goes to the bidder offering the best price-quality ratio. This process is somewhat similar to the 'Competitive Dialogue' mode of tendering featuring in Regulation 30 of the UK's Public Contracts Regulations, 2015. It was recommended that this mode could be further developed to deal with large public procurement projects which have complexity in their features.

#### ii. *Conflict of interest*

Regarding the problem of conflict of interest, which often occurs to distort competition in public procurement, Clause 45 of the PPB 2012 makes the supplier responsible for guarding against conflict of interest by prohibiting the supplier from hiring recently retired personnel who have previously worked in the procuring agency.

**Recommendation:** The conflict of interest is not a one-way traffic, and both the contracting agency as well as the supplier are responsible for ensuring that conflict of interest does not arise by mandating '**Disclosure**' by personnel of both the procuring agency and the supplier, and by prohibiting officials of either side who have a personal interest in a particular procurement to process or participate in that particular procurement.

#### iii. *Acceptance of the L-2 offer if L-1 withdraws*

In case the L-1 method is used (vide Clause 24 of the PPB 2012) and the L-1 supplier backs out, then the best course of action would be to opt for limited bidding among all the remaining qualified bidders, rather than fully cancelling the process

and commencing it de novo, which would cause time and cost escalation.

**Recommendation:** Experts have suggested that certain safeguards must be maintained if the L-2 bidder is to be awarded the contract when L-1 has withdrawn. This safeguard can be the condition that the price and quality of the L-2 offer does not vary beyond a certain range from the original L-1 bid. The range could be fixed at a reasonable level plus/minus 10 percent of L-1 price and L1 quality.

Central Public Sector Enterprises (CPSEs) represented at the Consultation highlighted the new methods used by the CPSEs, namely, the Quality and Cost Based Selection (QCBS) and the Least Cost Based Selection (LCBS). Opting for Quality Cost Based Selection (QCBS) implies maximum weight is given to Quality as opposed to the Cost, usually in the ratio 70:30 (i.e. 70 percent weight is given to Quality and 30 percent weight is given to the cost parameters respectively). LCBS is a mode in which pre-defined quality parameters are given in the bid itself and based on whether a bidder is meeting the minimum quality criteria, bids are evaluated on cost.

It was discussed by business stakeholders that a good balance between price and quality should be the principle to be enshrined in the PPB regulations.

#### iv. *Abnormally low tenders*

There is nothing in the PPB 2012 to guard against the non-genuineness of abnormally low tenders. It was felt by the business community that if it was anticipated that an abnormally low tender was likely to be awarded the tender, in that case the genuineness of the price factor would need to be verified. For comparison, Regulation 69 of the UK Public Contracts Regulation, 2015 could be a reference point.

### 3. PROCUREMENT OF PROPRIETARY ITEMS, SOLE SUPPLIERS AND SINGLE TENDERS

The business community recommended that in modification to PPB 2012 (Clause 32 thereof),

some significant precautions should be provided for ruling out abuse of the Single Source Procurement mode. These should be as follows:

- The functional requirements and standards of the field units should be clearly mentioned in the proposals for Single Source Procurement.
- Before finalizing standards for Single Source Procurement, the required market research should be conducted with emphasis on the solution/benefit sought to be achieved, rather than emphasis on any brand, as other brands may also be delivering similar or better solution/benefit at a lesser cost.
- While adopting new technologies, a cost-benefit analysis should be undertaken, and the cost incurred in changing technology to be reflected in the analysis. This should reflect not merely the replacement costs of systems and equipment, but also the cost of newly training/newly recruiting the manpower needed to operate the new technologies.
- Compliance to Proprietary Certificate as prescribed in Rule 154 of the General Financial Rules 2005 should be mandatory, whereby the procurer must certify that no other make or model is acceptable and reasons for so holding are to be recorded; the concurrence of the finance wing and the approval of the 'Competent Authority' must be obtained for the procurement proposal.
- Publication by the buyer that he has identified a single source supplier should be mandated. In case there is a challenger who claims that they also have the same product or service, they can approach the Grievance Redressal forum specified under the procurement regulations.

#### 4. TRANSPARENCY: RELEVANT PUBLIC INFORMATION AND LEVEL PLAYING FIELD

##### i. *Transparency through e-governance*

The standards for transparency are set very high through the PPB, 2012. Chapter III provides the institutional framework for the transparency mechanism. The important provisions, inter alia, is the setting up and maintenance of a Central Public Procurement Portal accessible to the public for making available prescribed procurement details to the public; empower government to make eprocurement compulsory for different stages/types of procurement as and when necessary; to provide for maintenance of documentary record of procurement proceedings and providing for Electronic Reverse Auction.

**Recommendations:** The Business representatives concurred that transparency can be promoted through e-portals/ by e-tendering. However, the reality is that e-bidding could also be rigged. If the internal data base is well known, it can be hacked before the start of the bidding procedure. Businesses cautioned that electronic tendering is a good option to increase transparency, but one should constantly evaluate the systems/ technology to see that transparency of the process is not compromised.

The experts also suggested that certain Transparency Safeguards should be built, so that competition is not distorted due to 'digital divide' between more and less technically equipped suppliers and that sensitive information submitted by the suppliers is to be kept confidential.

##### ii. *SME Transparency Requirements*

Businesses from the Small and Medium Enterprises (SMEs) sector suggested that the Central Public Procurement Portal should also carry information as regards to the outstanding dues owed to suppliers by the procuring entities, beyond the contracted time limits on undisputed bills.<sup>3</sup> The period and reason of delay should also be mentioned. A time limit for payment of bills should be set in the public procurement law for the bills of the SMEs.

<sup>3</sup> This suggestion is comparable to Regulation 113 of the UK Public Procurement Regulations 2015, which sets a time limit of payment of undisputed invoices by contracting authorities, contractors and sub-contractors and contains a requirement to publish on the internet statistics showing, for the preceding financial year, how far the contracting authority has actually complied with its obligations under the regulation.

To overcome the problem of the 'digital divide' affecting the small-scale industry, which often cannot make use of bidding opportunities due to lack of timely information/ not enough experience in use of internet/ handling of websites, there should be an e-registration system for bidders, where an email may be issued automatically to all the registered bidders whenever an invitation for bids is invited by a public procurement entity. This would enable more participation, especially by the SMEs, in public procurement. Such automated invitation to bid should also go to the industry associations of the SMEs for wider dissemination to their constituents.

## 5. MARKET ACCESS: DOMESTIC VS. NON-DOMESTIC PLAYERS

Unlike 'Buy National' provisions of most jurisdictions with regard to access to their PP market, Sec. 11(1) of the PPB 2012 does not discriminate in favour of any category of bidders, not even on the grounds of nationality. However, in the perspective of the 'Make in India' campaign, it had been suggested that the non-discrimination of Clause 11 (1) of PPB 2012 should be modified to favour the domestic industry. The advice of the business representatives presented at the Consultation, was that one needs to be selective about how much protection is to be extended to the domestic industry, as there is always a cost factor to be reckoned with when we totally block global competition.

**Recommendations:** Business representatives recommended that in the short term, protected markets are better in order to develop the local industry, while in the long term, protection will weaken the domestic enterprises and hamper their competitiveness. It was suggested that systems of 'mass customization' should be introduced wherein product-wise identification was done of products and sectors where there is oligopoly or monopoly (and apparent abuse of monopoly), so that international competition

is introduced especially in those sectors to break such monopoly/abuse.<sup>4</sup>

Clause 11(2) of the PPB 2012 allows government to extend preferential treatment on market access to any category of bidders on the grounds of promotion of domestic industry, socio-economic policy of government, any other consideration in public interest. We may leverage this clause to reserve specified sectors of public procurement for preferential market access to certain sectors of the domestic industry. These specified sectors would be in areas of critical technologies wherever deemed necessary and in which Indian producers can compete, such as electronic and IT hardware systems, solar energy equipment, as is currently being done through Preferential Market Access Policy in these sectors. Preference can also be extended to the disadvantaged yet important SME sector, which forms the backbone of our economy.

In the light of field realities, we recommend that as in the UK public procurement law, the non-discriminatory market access clause, making no open distinction on grounds of nationality for access to the domestic public procurement market, as occurring in PPB 2012, must be retained. But simultaneously, quantitative restrictions, tariff and non-tariff measures may be used to insulate our markets, as and when justified, on the ground of promotion/protection of domestic industry, balance of payments and other public interest issues (like adherence to Indian health/ sanitary and phyto-sanitary or technical standards, to prevent a surge of imports, balance-of-payment problems or to avoid 'dumping' by non-domestic players etc.). This is permissible, since Government Procurement is not within the ambit of WTO disciplines/ India is not a party to the plurilateral Government Procurement Agreement.

Furthermore, market access can be skillfully leveraged by India to its own advantage, by attaching conditions for such access to foreign

<sup>4</sup> But for this, much in depth data needs to be generated on product use in public procurement, which is not foreseeable in the near future, given the current status of data collection.

<sup>5</sup> A current example of use of offsets in public procurement is seen in the deal under negotiation with France for purchase from them of Rafale fighter aircraft, which comes with a 50 percent offset clause, meaning that 50 percent of the value of the deal has to be invested back in India. As per the Economic Times, New Delhi's report of 23rd September, 2016, France has made a 30 percent offset commitment for military aerospace R&D and balance 20 percent for making components of Rafale in India.

players, for example, by making market access dependent on willingness by the foreign supplier to agree to 'offsets'. By 'offset' it is meant any condition imposed on a bidder in relation to a particular procurement so as to encourage local development by means of domestic content, transfer of technical knowhow, licensing of technology, skill development, counter-trade, investment or other similar requirements, vide the definition in Clause 2 (n) of PPB 2012. The market access clause in the public procurement legislation should be as such, which would enable India to exploit the possibility of use of offsets.<sup>5</sup>

Lastly, as Business and Industry recommends, market access issues need to be reviewed frequently, to keep pace with changing circumstances.

## 6. GRIEVANCE REDRESSAL: FORUM FOR BIDDERS/ PROSPECTIVE BIDDERS

In keeping with the international norms, the PPB 2012 provides an independent grievance redress mechanism (Clause 41), comprising of a Redressal Committee appointed by the government, which is headed by a retired High Court Judge. This appeal mechanism is to be activated if review by the procuring entity does not yield satisfactory results for the aggrieved bidder. The Ministry of Finance later shared the view that formation of such committees may be administratively difficult/ might make the redressal process lengthy, and suggests that the grievance may be addressed by an officer senior to the Procurement Officer.

**Recommendations:** For the Ombudsman/ IEM to be effective it was recommended to alter the advisory role of the Ombudsman, to make it mandatorily binding on the procuring entity. Given mandatory powers, the cooperation with the Ombudsman/ IEM of the procuring authority would increase. Alternatively, the Ombudsman/ IEM could be empowered in such a way that in case of non-cooperation by the procuring authority to the queries of the Ombudsman/ IEM or failure to act upon its advice, the Ombudsman/ IEM would be entitled to make a reference to the Central Vigilance Commission (CVC), who, in their wisdom, could institute an independent enquiry/ tender advice to government on whether

to suspend/set aside the procurement process for retendering.

The time limit for grievance resolution by the independent Ombudsman/ IEM should be further restricted from that which is presently provided in the PPB 2012, so the process of the procurement is not held up unnecessarily. The Ombudsman/ IEM is to be assisted at least by a Grievance Officer, familiar with the working of the company, who is also aware of the public procurement law's provisions. There should also be a small secretariat that will provide miscellaneous support to the Ombudsman/IEM.

In cases of very large procurements, above a certain threshold level, there should be a collegium of at least two Ombudsmen/IEMs to decide on the grievance.

*Another useful suggestion from the industry is to provide for some 'Pre-Dispute Resolution Mechanism' inter alia, by ensuring proper contract management. The law can provide for time limits for certification by the procuring entity of work done/supplies received/services rendered by the supplier; for processing of bills; for payment of undisputed bills; and for amicable resolution of disputes by discussion between the procurer and the supplier.*

The present scope for 'Review by the procuring entity' as given in Clause 40 of the PPB 2012 can be expanded to encompass these concepts. Only in case of failure of the 'Pre-Dispute Resolution Mechanism' to arrive at a solution would there be a reference to the Grievance Redressal Mechanism, comprising of Ombudsman/ IEM.

## 7. PROBITY: PENAL PROVISIONS AND COMPLIANCE WITH THE ACT

The PPB 2012 has provisions for debarment (for a period of 2-3 years) from future participation in a procurement process, if found guilty of certain offences, and penalties ranging from fines to imprisonment, if found committing corrupt or anti-competitive acts under its provisions.



**Recommendations:** Business stakeholders agreed with the view expressed by Ministry of Finance in the course of public consultations, that since punishment mentioned for certain acts under the Bill are already punishable offences under other existing laws, the penal provisions of PPB 2012 should be dropped. The stakeholders also share the view that double punishment would be too harsh, but there should remain a mention of punishable offences under the various existing laws. Moreover, the provisions for debarment for 2-3 years from the procurement process should be retained for misdemeanor under the enactment. These amendments to the penal provisions of the PPB 2012 would make the law more business friendly, though not lax.

## 8. SUSTAINABLE PUBLIC PROCUREMENT: INTEGRATING ENVIRONMENTAL NORMS

The PPB 2012, in its present form, has already set a major trend in the greening of public procurement. Clause 21(1) of the PPB, 2012 gives an option to use environmental characteristics in the evaluation criteria for award of a tender.

**Recommendation:** The MSME sector would have to be aided by Government to adopt means to generate less pollution in their production processes, to equip them to participate better in public procurement.

The evaluation criteria could also include social responsibility clauses, such as payment of living wages/extension of other social security benefits to workers by suppliers. These could be part of selection criteria of any supplier for the awarding of a public contract.

## IN CONCLUSION

A public procurement law which promotes transparency and fair competition is a natural

safeguard against corruption, more so than rules on the subject, which do not have the weight and certainty of law. Businesses themselves have given the reasons as to why they consider a single overarching public procurement law necessary and the ways in which the Public Procurement Bill 2012, which provides a baseline regulation, can be amended to facilitate business better.

However, it is seen that Government at this stage, instead of exerting a legislative option, has opted for an amendment in the main rules governing public procurement, namely, in the General Financial Rules(GFR) by notifying 'General Financial Rules 2017' on 8 March, 2017. A perusal of GFR 2017 reveals that several of the recommendations made by the Global Compact Network, India, which were shared with the Public Procurement Division of the Finance Ministry, at the stage when the new GFR was under preparation, have found reflection in GFR 2017. This is a welcome sign. The influence of GCNI's policy inputs in GFR 2017 are discussed in Annexure 1 to this paper.

Finally while the Rule 4 of the original GFR, retained in GFR 2017, states that "All Departmental regulations, in so far as they embody orders or instructions of a financial character or have important financial bearing, must invariably be made by, or with the approval of the Ministry of Finance" – this does not cover statutory bodies, like the CVC, and their power to issue guidelines. Rule 4 may be considered for further amendment, in order that statutory bodies, too, issue guidelines after deliberations with Ministry of Finance, for the sake of harmonized rule making. The legislative route is still recommended as safeguards are necessary for ensuring a clear-cut regulatory framework, which is essential for ease in doing business.

## ANNEXURE 1: GCNI WHITE PAPER INPUTS IN GFR 2017

The UN Global Compact Network India (UN-GCNI) had shared 'Business Recommendations for Public Procurement Policy in India', emanating from their research and business deliberations, with the Public Procurement Division of the Ministry of Finance (MOF) whilst the Draft GFR 2016 were being finalized. While the MOF has not agreed to present a new Public Procurement Bill for passage in Parliament, it is encouraging to note that many of the ideas of UN-GCNI are reflected in the GFR 2017. Some of the salient ideas of GCNI's Paper, reflected in the 2017 Rules, are as follows:

### 1) COVERAGE

The new draft GFR sets no minimum threshold level for coverage under its rules, as recommended in our Policy Paper, although the Public Procurement Bill 2012 had set a threshold level of INR 50,00,000 per procurement in this regard. This is a welcome development, for if a minimum threshold limit had been set, the artificial splitting-up of procurements into several small procurements below the minimum levels could have taken place to avoid the rigours of the rules.

### 2) COMPETITION

**In Rule 164:** (Competitive Dialogue) Our recommendation on holding a dialogue with qualified bidders to identify the best means to meet the requirements of a complex procurement process, where the procuring authority cannot in advance specify the technical aspects of the project, has been accepted. Rule 164 relates to 'Two-Stage Bidding', vide the provisions in Rule 164(i) and (ii) for "discussion with bidders" if "it is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders".

It is also seen that GCNI's recommendation to give equal treatment to all participants in the dialogue process is provided for in Rule 164(ii)

(c), which states that regarding the committee for Two-Stage Bidding: "the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity is given to all bidders to participate in the discussions."

Rule 164 would have been further strengthened if our recommendation of avoiding information asymmetry had been articulated by clearly stating in Rule 164(ii)(c) that "the procuring entity/committee shall not provide information in a discriminatory manner, which may give some participants unfair advantage over others".

Our recommendation that award of the bid should be on price-quality ratio, with quality having the greater weight has been reflected in GFR 2017 Rule 164, whose cap states that "receipt of financial bids" will only be "after receipt and evaluation of technical bids".

173(iv): It is seen that the concern of the GCNI Paper for safeguarding the rights of both bidders and procuring agency is reflected in the sub-rule which mandates that satisfactory reasons must be given to a bidder who is challenging the selection process: "...the reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by a bidder...".

### In Rule 175: Code of Integrity

The GCNI'S emphasis on integrity and fair competition norms being binding on both procurer and bidder is reflected in this Rule, which makes the Code of Integrity binding on both sides of the table.

Especially of interest to the GCNI is that "Disclosure of Conflict of Interest" by both procurer and bidder, which features prominently in GCNI's recommendations to foster competition, also features as an obligation under the Code of Integrity.

However, it is inappropriate that under Sub-Rule 2 of 175, it is the procuring entity which is to “take appropriate measures” for breach of the Code of Integrity by any bidder or prospective bidder. This is inappropriate as the Code covers misconduct by both parties, i.e. the bidder and the procurer. Rather the responsibility for taking action in such a situation should have been cast on an independent Ombudsman, as advocated by the GCNI in its brief.

### In Rule 192 and 193: Quality concerns

The GCNI’s submission that quality rather than cost should have maximum weight in public procurement is borne out in the case of procurement of consultancy services in the Draft GFR 2016, whereby ‘Quality and Cost Based Selection’ or QCBS is to be used for procurement in a situation where “quality of consultancy is of prime concern”, where up to 80 percent weight can be assigned to quality. It is only “for assignments of a standard or routine nature... where established methodologies, practices and standards exist”, and where there is no weight for technical score that Least Cost System (LCS) is used (“the responsive technically qualified proposal with the lowest evaluated score will be selected”).

### 3) SINGLE TENDER AND SOLE SUPPLIERS

**Rule 166:** GCNI had recommended that there should be compliance to a Proprietary Article Certificate, as was there in Rule 154 of the GFR 2005, but which was not prescribed in the Public Procurement Bill (PPB) 2012. The Proprietary Article Certificate commits the procurer to certify that no other make or model is acceptable and reasons for so holding are to be recorded; the concurrence of the finance wing and the approval of the ‘Competent Authority’ are also to be recorded. It is encouraging to see that compliance to such a Certificate has been made necessary in Rule 166 of GFR 2017. This will go a long way in ensuring against rampant misuse of Single Tender procurement provisions.

### 4) TRANSPARENCY AND LEVEL PLAYING FIELD

E-Governance: GCNI’s emphasis on maintaining the transparency mechanisms inherited from the Public Procurement Bill 2012/GFR 2005 through e-governance, finds reflection in Rule 159, mandating publication of all important procurement information by e-publication through the Central Public Procurement Portal; in Rule 160 making e-procurement compulsory for all procurements without any lower threshold limit; in Rule 167 promoting Electronic Reverse Auction for certain types of procurement. Use of digital technology is likely to make the procurement process much more transparent and unbiased.

### 5) MARKET ACCESS

**Rule 153:** Reserved Items and other Purchase/ Price Preference Policy:

Rule 153(ii) recognizes the procurement policy notified by the Ministry of Micro, Small and Medium Enterprises (MSME) under Section 11 of the MSME Development Act, 2006. Rule 153(iii) provides that Central Government may notify mandatory purchase and price preference for any type of goods from any category of bidders on the ground of promotion of local goods and services. Both these Rules are in tune with GCNI’S recommendations that we may preserve the spirit of Clause 11(2) of the Public Procurement Bill, 2012 in any new regulation, which provides for purchase and price preference to any category of goods/any category of bidders, on the grounds of promotion of domestic industry, socio-economic policy of the government or any other consideration in public interest.

### 6) PROBITY

**In Rule 151:** Debarment GCNI’s concern that breach of rules be discouraged through appropriate disincentives like debarment, finds reflection in Rule 151, through which bidders may be debarred for conviction under existing laws/ breach of the Code of Integrity under GFR 2017, vide provisions as under:



Rule 151. (1) A bidder shall be debarred if he has been convicted of an offence

(a) under the Prevention of Corruption Act, 1988; or  
(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

Further, our recommendation that for certain acts under the Bill, which are already punishable offences under other existing laws, there should be no double punishment under the procurement law (though the same was provided for in the PPB 2012) has been agreed to, as GFR 2017 prescribes no other sanctions except debarment.

## 7) SUSTAINABLE PUBLIC PROCUREMENT

173(xi): GCNI's concern for Sustainable Public Procurement is reflected in the fact that in "Criteria for determining responsiveness" which "are to be taken into account for evaluating the bids" include "environmental characteristics".

173(xvii): This sub-Rule also echoes GCNI's sustainability concerns in that it holds that in the

government procurement of electrical appliances notified by the Department of Expenditure, the procurer has to "ensure that they carry the notified threshold or higher Star Rating of the Bureau of Energy Efficiency".

## IN CONCLUSION

Reforms in public procurement are likely to have significant economic impact, considering that government procurement, inclusive of Defence, by the Centre, States and local bodies are valued annually at almost 30 percent of India's GDP<sup>6</sup>, and cover almost every sphere of government activity.

A public procurement law/ rule which promotes transparency and fair competition is a natural safeguard against corruption. While the GFR Rules 2017 are a step in the right direction, GCNI agrees with the unanimous business submission that a Public Procurement Act is much needed in India. Procurement reforms will also serve to improve India's position in the Transparency International's Corruption Perception Index and World Bank's Ease of Doing Business rankings.

<sup>6</sup> Source: CUTS International, 'Government Procurement in India: Domestic Regulation and Trade Prospects', 2012, in which the author of this paper is a co-author.

## ANNEXURE 2: REPORT ON PROCESS OF PREPARING BUSINESS RECOMMENDATIONS

A key mandate of the Centre of Excellence for Governance, Ethics & Transparency (CEGET) of the UN Global Compact Network, India is to provide an enabling platform for innovative solutions around the 10th UNGC Principle, to businesses, policymakers, civil society, industry associations, UN agencies and academia. In pursuance of this mandate a project was undertaken to elicit business

responses for public procurement legislative development in India. Ms. Bulbul Sen IRS (Retd.), author of 'Government Procurement in India: Domestic Regulation and Trade Prospects', CUTS International, 2012 and 3 other publications on public procurement between 2012-2015 worked exclusively in the realization of this project. The year-long engagement included:

Activities	Timeline
Survey of literature and interaction with experts to understand and highlight the lacunas in the Public Procurement Bill, with special emphasis on businesses	October 2015 – February 2016
A detailed Discussion Paper prepared and circulated to Businesses for feedback	March 2016 – May 2016
Business Consultation organized to finalize and finetune business recommendations	June 2016
Policy Advocacy facilitated with relevant departments in different Ministries	August 2016 – November 16

This project was undertaken in light of the fact that the Public Procurement Bill of 2012 that had lapsed in 2014 with the dissolution of the 15th Lok Sabha had been revived by present Government in 2015, and consultations with stakeholders had been facilitated for suggesting modifications to the Bill of 2012, to align it with the priorities of current Government. From the trend of consultation, in which GCNI Ms. Bulbul Sen had participated as an independent consultant, it appeared that the effort was to remove unnecessary regulation in the Bill of 2012, so that it did not stifle business initiative, while at the same time promoting a framework to encourage competition, transparency and probity in public procurement.

Accordingly, this project focused on re-orienting the Bill on the principles of introducing 'Ease of Doing Business', which was articulated as a major

strategy of current government to revitalize the economy and with which strategy the UN Global Compact, India and CEGET are in agreement. The study was to focus on the seven major propositions around Coverage, Competition, Transparency, Market Access, Grievance Review and Redress, Probity and Sustainable Public Procurement.

### Survey of Literature and interaction with experts.

The survey of literature included survey of the model instruments having a bearing on public procurement, including the UNCITRAL Model Law on public procurement; the WTO's Government Procurement Agreement (amended 2012); the UN Convention Against Corruption, which India ratified in 2011; the Integrity Pact Model of the Transparency International and so

on. For latest recommendations on ethical yet pragmatic approach to business practices, the B-20 Anti – Corruption Taskforce Policy Paper of September, 2015 was also perused, as also the OECD Concept brief of March, 2013 on ‘High Level Reporting Mechanism’. On the sustainability angle in public procurement, the final report of UNEP on ‘Sustainable Public Procurement: a Global Review’ of 2013 was studied, along with the declaration arrived at in the UN’s Sustainable Development Summit of 25-27 September, 2015.

As regards survey of laws of other countries, it was thought necessary to do so in view of the fact that while the model instruments and policy papers (referred to above) gave ideal formulations, the pragmatic approach to ethical conduct of business is more likely to be found in the actual legislation of countries relevant to the Indian experience. The UK’s ‘Public Contracts Regulations’ 2015 was taken up, as it was based on the EU Directive 2014/24/EU and therefore reflected the recent thinking on public procurement regulations not only of the UK but also of a major economic block, the entire European Union. The Chinese model of public procurement was also analyzed through a study of their Tendering Law of 30 August 1999 and their Government Procurement Law of 29 June 2002. The Chinese model was selected for study as China is one of the continental size emerging economies with which India is often benchmarked.

Consultations with experts comprised of discussions held with Shri Vinod Dhall, Chairman of the GOI-Appointed Committee for reform of Public Procurement, which submitted its landmark ‘Report of the Committee on Public Procurement’ on 31.1.2011; Shri Sumit Bose, Former Secretary Expenditure and Chairman of the Drafting Committee of the Public Procurement Bill 2012; and Shri Sushanta Sen, Senior Consultant, CII and Member of the B-20 Taskforce on Anti-Corruption.

An interim report was submitted on 21.1.2016 and the final ‘Recommendations for Modifications to the PPB 2012 from the Business Perspective’ was submitted on 27.2.2016. This report of over 200 pages was condensed into a Working Paper of 29 pages by June, 2016 in collaboration

with CEGET and it was presented at the June Consultation.

### Procurement Consultation in New Delhi

The Working Paper titled ‘**Business Recommendations for Public Procurement Legislation in India: the Seven Propositions**’, was deliberated at the Consultation, which was attended by senior members of the procurement wings of several public sector and private sector industries, including Maharatna CPSEs like ONGC, GAIL, and major private sector companies, including Siemens India, as also representatives of the SMEs sectors and legal experts. **A new facet on public procurement reform, on prevention of abuse of the provisions of Single Source Procurement emerged in the course of the consultation**, and was subsequently integrated into the recommendations finalised.

### Policy Advocacy

The finalized paper was vetted by an expert on Competition Policy from the perspective of the Competition Act, 2002, of India. The experts endorsed all the recommendations and said that “as far as Competition Law is concerned, the main concern is that tender designs and bidding procedures should not encourage collusive bidding. Further, to promote competition, it is vital that rules are designed such that there is maximum participation without information exchange being facilitated amongst the potential bidders. Open competitive bidding then is considered the best mode of procurement with a view to encourage participation of maximum eligible bidders and getting the best value for money.”

Subsequently meetings with Government Departments were organized.

### Meeting with the Public Procurement Division, Department of Expenditure, Ministry of Finance on 31.08.2016.

The Ministry of Finance representative displayed considerable interest on the aspects of coverage, market access and certain aspects of Competition, like the issue of ‘Conflict of Interest’. In reply to a query, it was clarified that only those officials

of a contracting authority having a substantial interest in the concerned supplier would need to be excluded from a procurement process to avoid conflict of interest, and such substantial interest, since it was not defined elsewhere, could be derived from the definition of 'Related Party Transactions', as given in the Companies Act, 2013. As these provisions of the Companies Act deal with the same issue of non-arms length transactions. The much-debated issue of Grievance Redress emerged as an area of interest in GCNI presentation.

### **Meeting with the Trade Policy Division, Department of Commerce on 05.09.2016**

The Ministry of Commerce representative expressed agreement with the view of GCNI that India's Public Procurement markets should under any law or regulation on the subject, be de jure kept open to its trading partners, but de facto, as and when our business required it, the market should be restricted. As India is a non-signatory to the Government Procurement Agreement of WTO, it is under no obligation to keep open its government procurement market to non-domestic players.

### **Meeting with Niti Aayog on 06.09-2016**

The Niti Aayog representative seemed impressed with the fact that the business stakeholders in GCNI consultation held on 6 June, 2016 expressed their preference for the certainty and clarity of a law on public procurement in preference to rules, and felt that this should be conveyed to the highest levels in the Aayog. Under the rubric of Competition, they were particularly concerned about the problem of excessively low tenders very often winning award of government contracts, and the consequent impact on quality, and were impressed to hear GCNI solution in overcoming this issue.

They were also impressed with the GCNI recommendation on Single Source Procurement, especially precautions suggested for avoiding misuse of this form of procurement.

### **Media**

The learning and recommendations from GCNI CEGET's intervention on procurement was carried as an article in the Hindu Business Line of Tuesday November 29, 2016. The article can be accessed through the following link:

<<http://www.thehindubusinessline.com/opinion/public-procurement-rules-needhttp://www.thehindubusinessline.com/opinion/public-procurement-rules-need-change/article9398841.ecechange/article9398841.ece>>

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<sup>7</sup> Dr Seema Gaur, IES, Economic Adviser, Department of Industrial Policy & Promotion, former Adviser, Competition Commission of India and a noted commentator on competition policy- its theory and practice.

## ANNEXURE 3: GFR 2017 (Procurement of Goods and Services)

### PROCUREMENT OF GOODS

**Rule 142:** This chapter contains the general rules applicable to all Ministries or Departments, regarding procurement of goods required for use in the public service. Detailed instructions relating to procurement of goods may be issued by the procuring departments broadly in conformity with the general rules contained in this Chapter.

**Rule 143:** Definition of Goods. The term 'goods' used in this chapter includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, medicines, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machineries comprising of an integrated production process or such other category of goods or intangible products like software, technology transfer, licenses, patents or other intellectual properties purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc. for a library. The term 'goods' also includes works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance.

**Rule 144:** Fundamental principles of public buying (for all procurements including procurement of works). Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the following yardsticks :

- (i) The description of the subject matter of procurement to the extent practicable should
  - a) be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics.
  - b) not indicate a requirement for a particular trade mark, trade name or brand.
- (ii) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.
- (iii) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist.
 

Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification.
- (iv) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs.
- (v) offers should be invited following a fair, transparent and reasonable procedure.
- (vi) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects.
- (vii) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.



- (viii) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
- (ix) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.
- (x) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website.

**Rule 145:** Authorities competent to purchase goods. An authority which is competent to incur expenditure may sanction the purchase of goods required for use in public service in accordance with provisions in the Delegation of Financial Powers Rules, following the general procedure contained in the following rules.

**Rule 146:** Procurement of goods required on mobilisation Procurement of goods required on mobilisation and/ or during the continuance of Military operations shall be regulated by special rules and orders issued by the Government on this behalf from time to time.

**Rule 147:** Powers for procurement of goods. 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 project its indent to the Central Purchase Organisation (e.g. DGS&D) with the approval of competent authority. The indent form to be utilised for this purpose will be as per the standard form evolved by the Central Purchase Organisation

**Rule 148:** Rate Contract. DGS&D shall conclude rate contracts with the registered suppliers for such goods, which are not available on GeM, and are identified as common use items and are needed on recurring basis by various Central Government Ministries or Departments. DGS&D will furnish and update all the relevant details of the rate contracts on its website. The Ministries or Departments shall follow those rate contracts to the maximum extent possible.

**Rule 149:** Government e-Market place (GeM). DGS&D or any other agency authorized by the Government will host an online Government e-Marketplace (GeM) for common use Goods and Services. DGS&D will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by DGS&D. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under : →

- (i) Up to Rs.50,000/- through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period.
- (ii) Above Rs.50,000/-and up to Rs.30,00,000/- through the GeM Seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer if decided by the competent authority.
- (iii) Above Rs.30,00,000/- through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.
- (iv) The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.
- (v) The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.
- (vi) The Ministries/Departments shall work out their procurement requirements of Goods and Services on either "OPEX" model or "CAPEX" model as per their requirement/ suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement

Plan of goods and services on GeM portal within 30 days of Budget approval.

- (vii) The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price etc.
- (viii) A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.

### Rule 150 Registration of Suppliers

- (i) With a view to establishing reliable sources for procurement of goods commonly required for Government use, the Central Purchase Organisation (e.g. DGS&D) will prepare and maintain item-wise lists of eligible and capable suppliers. Such approved suppliers will be known as "Registered Suppliers". All Ministries or Departments may utilise these lists as and when necessary. Such registered suppliers are prima facie eligible for consideration for procurement of goods through Limited Tender Enquiry. They are also ordinarily exempted from furnishing bid security along with their bids. A Head of Department may also register suppliers of goods which are specifically required by that Department or Office, periodically. Registration of the supplier should be done following a fair, transparent and reasonable procedure and after giving due publicity.
- (ii) Credentials, manufacturing capability, quality control systems, past performance, after-sales service, financial background etc. of the supplier(s) should be carefully verified before registration.
- (iii) The supplier(s) will be registered for a fixed period (between 1 to 3 years) depending on the nature of the goods. At the end of this period, the registered supplier(s) willing to continue with registration are to apply afresh for renewal of registration. New supplier(s)

may also be considered for registration at any time, provided they fulfil all the required conditions.

- (iv) Performance and conduct of every registered supplier is to be watched by the concerned Ministry or Department. The registered supplier(s) are liable to be removed from the list of approved suppliers if they fail to abide by the terms and conditions of the registration or fail to supply the goods on time or supply substandard goods or make any false declaration to any Government agency or for any ground which, in the opinion of the Government, is not in public interest.
- (v) The list of registered suppliers for the subject matter of procurement be exhibited on the Central Public Procurement Portal and websites of the Procuring Entity/ e-Procurement/ portals.

### Rule 151: Debarment from bidding.

- (i) A bidder shall be debarred if he has been convicted of an offence—
  - (a) under the Prevention of Corruption Act, 1988; or
  - (b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
- (ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.
- (iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment

**Rule 152:** Enlistment of Indian Agents. As per the Compulsory Enlistment Scheme of the Department of Expenditure, Ministry of Finance, it is compulsory for Indian agents, who desire to quote directly on behalf of their foreign principals, to get themselves enlisted with the Central Purchase Organisation (eg. DGS&D). However, such enlistment is not equivalent to registration of suppliers as mentioned under Rule 150.

**Rule 153:** Reserved Items and other Purchase/ Price Preference Policy.

- (i) The Central Government, through administrative instructions, has reserved all items of hand spun and hand-woven textiles (khadi goods) for exclusive purchase from Khadi Village Industries Commission (KVIC). It has also reserved all items of handloom textiles required by Central Government departments for exclusive purchase from KVIC and/or the notified handloom units of Association of Corporations and Apex Societies of Handlooms (ACASH).
- (ii) Ministry of Micro, Small and Medium Enterprises (MSME) have notified procurement policy under section 11 of the Micro, Small and Medium Enterprises Development Act, 2006.
- (iii) The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

**Rule 154:** Purchase of goods without quotation. Purchase of goods upto the value of Rs. 25,000 (Rupees twenty five thousand) only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority in the following format.

"I,, am personally satisfied that these goods purchased are of the requisite quality and

specification and have been purchased from a reliable supplier at a reasonable price.

**Rule 155:** Purchase of goods by Purchase Committee. Purchase of goods costing above Rs. 25,000 (Rupees twenty five thousand only) and upto Rs.2,50,000/- (Rupees two lakh and fifty thousand only) on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under. "Certified that we, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Commerce or Ministry/ Department concerned.

**Rule 156:** (1) Purchase of goods directly under Rate Contract. In case a Ministry or Department directly procures Central Purchase Organisation (e.g. DGS&D) rate contracted goods from suppliers, the prices to be paid for such goods shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the Rate Contract. The Ministry or Department shall make its own arrangement for inspection and testing of such goods where ever required.

**Rule 156:** (2) The Central Purchase Organisation (e.g. DGS&D) should host the specifications, prices and other salient details of different rate contracted items, appropriately updated, on the web site for use by the procuring Ministry or Department.

**Rule 157:** A demand for goods should not be divided into small quantities to make piecemeal purchases to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand.



**Rule 158:** Purchase of goods by obtaining bids. Except in cases covered under Rule 154, 155, and 156(1), Ministries or Departments shall procure goods under the powers referred to in Rule 147 above by following the standard method of obtaining bids in : (i) Advertised Tender Enquiry (ii) Limited Tender Enquiry (iii) Two-Stage Bidding (iv) Single Tender Enquiry (v) Electronic Reverse Auctions

**Rule 159:** E-Publishing

- (i) It is mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP).
- (ii) Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure.
- (iii) The above instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party.
- (iv) In the case of procurements made through DGS&D Rate Contracts or through any other Central Procurement Organizations (CPOs) only award details need to be published.
- (v) These instructions would not apply to procurements made in terms of provisions of Rules 154 (Purchase of goods without

quotations) or 155 (Purchase of goods by purchase committee) of General Financial Rules.

**Rule 160:** E-Procurement

- (i) It is mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements.
- (ii) Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far, may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.
- (iii) These instructions will not apply to procurements made by Ministries / Departments through DGS&D Rate Contracts. (iv) In individual case where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers. (v) In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender, may exempt such case from e-procurement.

**Rule 161:** Advertised Tender Enquiry

- (i) Subject to exceptions incorporated under Rule 154, 155, 162 and 166, invitation to tenders by advertisement should be used for procurement of goods of estimated value of Rs. 25 lakhs (Rupees Twenty Five Lakh) and above. Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in) and on GeM. An organisation having its own website should also publish all its advertised tender enquiries on the website.
- (ii) The organisation should also post the complete bidding document in its website and on CPPP to enable prospective bidders to make use of the document by downloading from the web site.

- (iii) The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- (iv) In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.
- (iv) Where the Ministry or Department feels that the goods of the required quality, specifications etc., may not be available in the country and it is necessary to also look for suitable competitive offers from abroad, the Ministry or Department may send copies of the tender notice to the Indian Embassies abroad as well as to the foreign Embassies in India. The selection of the embassies will depend on the possibility of availability of the required goods in such countries. In such cases e-procurement as per Rule 160 may not be insisted.
- (v) Ordinarily, the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the Department also contemplates obtaining bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidders.
- (ii) The unsolicited bids should not be accepted. However Ministries/ Departments should evolve a system by which interested firms can register and bid in next round of tendering.
- (iii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twenty-five Lakhs, in the following circumstances.
  - (a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.
  - (b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.
  - (c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
  - (iv) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

**Rule 162:** Limited Tender Enquiry

- (i) This method may be adopted when estimated value of the goods to be procured is up to Rupees Twenty five Lakhs. Copies of the bidding document should be sent directly by speed post/registered post/courier/ e-mail to firms which are borne on the list of registered suppliers for the goods in question as referred under Rule 150 above. The number of supplier firms in Limited Tender Enquiry should be more than three. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.

Further, an organisation should publish its limited tender enquiries on Central Public Procurement Portal (CPPP) as per Rule 159. Apart from CPPP, the organisations should publish the tender enquiries on the Department's or Ministry's web site.

**Rule 163:** Two bid system (simultaneous receipt of separate technical and financial bids) : For purchasing high value plant, machinery etc. of a complex and technical nature, bids may be obtained in two parts as under :

- (i) Technical bid consisting of all technical details along with commercial terms and conditions; and
- (ii) Financial bid indicating item-wise price for the items mentioned in the technical bid.

The technical bid and the financial bid should be sealed by the bidder in separate covers duly super-scribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly super-scribed. The technical bids are to be opened by the purchasing Ministry or Department at the first instance and evaluated by a competent committee or authority. At the second stage financial bids of only these technically acceptable offers should be opened after

intimating them the date and time of opening the financial bid for further evaluation and ranking before awarding the contract.

**Rule 164:** Two-Stage Bidding (Obtain bids in two stages with receipt of financial bids after receipt and evaluation of technical bids)

- (i) Ministry/Department may procure the subject matter of procurement by the method of two-stage bidding, if
  - (a) it is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or
  - (b) the character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; or
  - (c) Ministry/Department seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or
  - (d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- (ii) The procedure for two stage bidding shall include the following, namely:—
  - (a) in the first stage of the bidding process, the Ministry/Department shall invite bids through advertised tender containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price;
  - (b) all first stage bids, which are otherwise eligible, shall be evaluated through an appropriate committee constituted by the Ministry/Department;
  - (c) the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;
  - (d) in revising the relevant terms and conditions

of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or omit any specification of the subject matter of procurement or criterion for evaluation;

- (e) in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement;
- (f) any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

**Rule 165:** Late Bids. In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered.

**Rule 166:** Single Tender Enquiry. Procurement from a single source may be resorted to in the following circumstances

- (i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods
- (ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.
- (iii) For standardisation of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm  
 Note : Proprietary Article Certificate in the following form is to be provided by the Ministry/Department before procuring the goods from a single source under the provision of sub Rule 166

- (i) and 166 (iii) as applicable.
- (i) The indented goods are manufactured by M/s.....
- (ii) No other make or model is acceptable for the following reasons :.....
- (iii) Concurrence of finance wing to the proposal vide: .....
- (iv) Approval of the competent authority vide:  
(Signature with date and designation of the indenting officer)

**Rule 167:** Electronic Reverse Auction

- (i) Electronic Reverse Auction means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- (ii) A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method, if:
  - (a) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
  - (b) There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured;
  - (c) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms; and
- (iii) The procedure for electronic reverse auction shall include the following, namely:
  - (a) The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and
  - (b) The invitation shall, in addition to the information as specified in e-procurement, include details relating to access to and registration for the auction, opening and closing of the auction and Norms for conduct of the auction.

**Rule 168:** Contents of Bidding Document All the terms, conditions, stipulations and information to be incorporated in the bidding document are to be shown in the appropriate chapters as below :-

- Chapter – 1: Instructions to Bidders.
- Chapter – 2: Conditions of Contract.
- Chapter – 3: Schedule of Requirements.
- Chapter – 4: Specifications and allied Technical Details.
- Chapter – 5: Price Schedule (to be utilised by the bidders for quoting their prices).
- Chapter – 6: Contract Form.
- Chapter – 7: Other Standard Forms, if any, to be utilised by the purchaser and the bidders.

**Rule 169:** Maintenance Contract. Depending on the cost and nature of the goods to be purchased, it may also be necessary to enter into maintenance contract(s) of suitable period either with the supplier of the goods or with any other competent firm, not necessarily the supplier of the subject goods. Such maintenance contracts are especially needed for sophisticated and costly equipment and machinery. It may, however, be kept in mind that the equipment or machinery is maintained free of charge by the supplier during its warranty period or such other extended periods as the contract terms may provide and the paid maintenance should commence only thereafter.

**Rule 170:** Bid Security

- (i) To safeguard against a bidder’s withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department. The bidders should be asked to furnish bid security

along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value of the goods to be procured. The amount of bid security should be determined accordingly by the Ministry or Department and indicated in the bidding documents. The bid security may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period.

- (ii) Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract.
- (iii) In place of a Bid security, the Ministries/ Departments may require Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit Bids for contracts with the entity that invited the Bids.

**Rule 171: Performance Security**

- (i) To ensure due performance of the contract, Performance Security is to be obtained from the successful bidder awarded the contract. Unlike contracts of Works and Plants, in case of contracts for goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance Security should be for an amount of five to ten per cent. of the value of the contract as specified in the bid documents. Performance Security may be furnished in the form of an Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial bank, Bank Guarantee from a

Commercial bank or online payment in an acceptable form safeguarding the purchaser's interest in all respects.

- (ii) Performance Security should remain valid for a period of sixty days beyond the date of completion of all contractual obligations of the supplier including warranty obligations. (iii) Bid security should be refunded to the successful bidder on receipt of Performance Security.

**Rule 172: (1)** Advance payment to supplier Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments for example in the following types of cases :-

- (i) Advance payment demanded by firms holding maintenance contracts for servicing of Air-conditioners, computers, other costly equipment, etc.
- (ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc. Such advance payments should not exceed the following limits :
  - (a) Thirty per cent. of the contract value to private firms;
  - (b) Forty per cent. of the contract value to a State or Central Government agency or a Public Sector Undertaking; or
  - (c) in case of maintenance contract, the amount should not exceed the amount payable for six months under the contract. Ministries or Departments of the Central Government may relax, in consultation with their Financial Advisers concerned, the ceilings (including percentage laid down for advance payment for private firms) mentioned above. While making any advance payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

**Rule 172: (2)** Part payment to suppliers: Depending on the terms of delivery incorporated in a contract, part payment to the supplier may be released after it dispatches the goods from its premises in terms of the contract.



**Rule 173:** Transparency, competition, fairness and elimination of arbitrariness in the procurement process All government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. Some of the measures for ensuring the above are as follows:-

- (i) the text of the bidding document should be self-contained and comprehensive without any ambiguities. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. The condition of prior turnover and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document. The bidding document should contain, inter alia.
  - (a) Description and Specifications of goods including the nature, quantity, time and place or places of delivery.
  - (b) the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc or limitation for participation of the bidders, if any. (c) eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc which may required to be met by the successful bidder.
  - (d) the procedure as well as date, time and place for sending the bids. (e) date, time and place of opening of the bid.
  - (e) Criteria for evaluation of bids (f) special terms affecting performance, if any. (g) Essential terms of the procurement contract
  - (h) Bidding Documents should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered". (ii) Any other information which the procuring entity considers necessary for the bidders to submit their bids. (iii) Modification to bidding document:
    - (a) In case any modification is made to the bidding document or any clarification is issued which materially affects the terms contained in the bidding document, the procuring entity shall publish or communicate such modification or clarification in the same manner as the publication or communication of the initial bidding document was made.
    - (b) In case a clarification or modification is issued to the bidding document, the procuring entity shall, before the last date for submission of bids, extend such time limit, if, in its opinion more time is required by bidders to take into account the clarification or modification, as the case may be, while submitting their bids.
    - (c) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or re-submit it, as the case may be, or withdraw such bid in case the modification to bidding document materially affect the essential terms of the procurement, within the period initially allotted or such extended time as may be allowed for submission of bids, after the modifications are made to the bidding document by the procuring entity: Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation
    - (iv) Suitable provision should be kept in responsiveness are to be taken into account for evaluating the bids such as: (a) time of delivery. (b) Performance/ efficiency/ environmental characteristics.
    - (c) the terms of payment and of guarantees in respect of the subject matter of procurement
    - (d) price.
    - (e) cost of operating, maintaining and repairing etc.
    - (xii) Bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; No new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids. Determination of a bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.
    - (xiii) Bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids.

- (xiv) Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation against an ad-hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.
- (xv) In the Rate Contract system, where a number of firms are brought on Rate Contract for the same item, negotiation as well as counter offering of rates are permitted to the bidders and for this purpose special permission has been given to the Directorate General of Supplies and Disposals (DGS&D).
- (xvi) Contract should ordinarily be awarded to the lowest evaluated bidder whose bid has been found to be responsive and who is eligible and qualified to perform the contract satisfactorily as per the terms and conditions incorporated in the corresponding bidding document. However, where the lowest acceptable bidder against ad-hoc requirement is not in a position to supply the full quantity required, the remaining quantity, as far as possible, be ordered from the next higher responsive bidder at the rates offered by the lowest responsive bidder.
- (xvii) Procurement of Energy Efficient Electrical Appliances: Ministries/ Departments while procuring electrical appliances notified by Department of Expenditure shall ensure that they carry the notified threshold or higher Star Rating of Bureau of Energy Efficiency (BEE).
- (xviii) The name of the successful bidder awarded the contract should be mentioned in the CPPP, Ministries or Departments website and their notice board or bulletin.
- (xix) Rejection of all Bids is justified when
- effective competition is lacking.
  - all Bids and Proposals are not substantially responsive to the requirements of the Procurement Documents.
  - the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget; or
  - none of the technical Proposals meets the minimum technical qualifying score.
- (xx) Lack of competition in rule 173
- (xix) shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:
- the procurement was satisfactorily advertised and sufficient time was given for submission of bids.
  - the qualification criteria were not unduly restrictive; and c. prices are reasonable in comparison to market values
- (xxi) When a limited or open tender results in only one effective offer, it shall be treated as a single tender contract.
- (xxii) In case a purchase Committee is constituted to purchase or recommend the procurement, no member of the purchase Committee should be reporting directly to any other member of such Committee in case estimated value of procurement exceeds Rs. 25 lakhs.
- Rule 174:** Efficiency, Economy and Accountability in Public Procurement System. Public procurement procedure should ensure efficiency, economy and accountability in the system. To achieve the same, the following key areas should be addressed :
- To reduce delay, appropriate time frame for each stage of procurement should be prescribed by the Ministry or Department.
  - To minimise the time needed for decision making and placement of contract, every Ministry/Department, with the approval of the competent authority, may delegate, wherever necessary, appropriate purchasing powers to the lower functionaries.
  - The Ministries or Departments should ensure placement of contract within the original validity of the bids. Extension of bid validity must be discouraged and resorted to only in exceptional circumstances.
  - The Central Purchase Organisation (e.g. DGS&D) should bring into the Rate Contract system more and more common user items which are frequently needed in bulk by various Central Government Departments. The Central Purchase Organisation (e.g. DGS&D)

should also ensure that the Rate Contracts remain available without any break.

**Rule 175:** (1) Code of Integrity

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

- (i) prohibition of
  - (a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.
  - (b) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
  - (c) any collusion, bid rigging or anti-competitive behavior that may impair the transparency, fairness and the progress of the procurement process.
  - (d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.
  - (e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.
  - (f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.
  - (g) obstruction of any investigation or auditing of a procurement process.
  - (h) making false declaration or providing false information for participation in a tender process or to secure a contract; (ii) disclosure of conflict of interest. (iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause
- (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

**Rule 175:** (2) The procuring entity, after giving a reasonable opportunity of being heard, comes to the conclusion that a bidder or prospective bidder, as the case may be, has contravened the code of integrity, may take appropriate measures.

**Rule 176:** Buy-Back Offer When it is decided with the approval of the competent authority to replace an existing old item(s) with a new and better version, the department may trade the existing old item while purchasing the new one. For this purpose, a suitable clause is to be incorporated in the bidding document so that the prospective and interested bidders formulate their bids accordingly. Depending on the value and condition of the old item to be traded, the time as well as the mode of handing over the old item to the successful bidder should be decided and relevant details in this regard suitably incorporated in the bidding document. Further, suitable provision should also be kept in the bidding document to enable the purchaser either to trade or not to trade the item while purchasing the new one.

**PROCUREMENT OF SERVICES**

**A. CONSULTING SERVICES**

**Rule 177:** “Consulting Service” means any subject matter of procurement (which as distinguished from ‘Non- Consultancy Services’ involves primarily non-physical project-specific, intellectual and procedural processes where outcomes/ deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a procuring entity but does not include direct engagement of a retired Government servant.

Note: These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.



**Rule 178:** The Ministries or Departments may hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion.

**Rule 179:** This chapter contains the fundamental principles applicable to all Ministries or Departments regarding engagement of consultant(s). Detailed instructions to this effect may be issued by the concerned Ministries or Departments. However, the Ministries or Departments shall ensure that they do not contravene the basic rules contained in this chapter.

**Rule 180:** Identification of Services required to be performed by Consultants: Engagement of consultants may be resorted to in situations requiring high quality services for which the concerned Ministry/ Department does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s).

**Rule 181:** Preparation of scope of the required Consultant(s): The Ministries/ Departments should prepare in simple and concise language the requirement, objectives and the scope of the assignment. The eligibility and prequalification criteria to be met by the consultants should also be clearly identified at this stage.

**Rule 182:** Estimating reasonable expenditure: Ministry or Department proposing to engage consultant(s) should estimate reasonable expenditure for the same by ascertaining the prevalent market conditions and consulting other organisations engaged in similar activities.

**Rule 183:** Identification of likely sources.

(i) Where the estimated cost of the consulting service is up to Rupees twenty-five lakhs, preparation of a long list of potential consultants may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc.

(ii) Where the estimated cost of the consulting services is above Rupees twenty-five lakhs, in addition to (i) above, an enquiry for seeking 'Expression of Interest' from consultants should be published on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in) and on GeM. An organisation having its own website should also publish all its advertised tender enquiries on the website. Enquiry for seeking Expression of Interest should include in brief, the broad scope of work or service, inputs to be provided by the Ministry or Department, eligibility and the pre-qualification criteria to be met by the consultant(s) and consultant's past experience in similar work or service. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry. Adequate time should be allowed for getting responses from interested consultants.

**Rule 184:** Short listing of consultants. On the basis of responses received from the interested parties as per Rule 183 above, consultants meeting the requirements should be short listed for further consideration. The number of short listed consultants should not be less than three.

**Rule 185:** Preparation of Terms of Reference (TOR). The TOR should include

- (i) Precise statement of objectives.
- (ii) Outline of the tasks to be carried out.
- (iii) Schedule for completion of tasks.
- (iv) The support or inputs to be provided by the Ministry or Department to facilitate the consultancy.
- (v) The final outputs that will be required of the Consultant.

**Rule 186:** Preparation and Issue of Request for Proposal (RFP). RFP is the document to be used by the Ministry/Department for obtaining offers from the consultants for the required service. The RFP should be issued to the shortlisted consultants to seek their technical and financial proposals. The RFP should contain :

- (i) A letter of Invitation
- (ii) Information to Consultants regarding the procedure for submission of proposal.
- (iii) Terms of Reference (TOR).
- (iv) Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.
- (v) List of key position whose CV and experience would be evaluated.
- (vi) Bid evaluation criteria and selection procedure.
- (vii) Standard formats for technical and financial proposal.
- (viii) Proposed contract terms.
- (ix) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

**Rule 187:** Receipt and opening of proposals  
Proposals should ordinarily be asked for from consultants in 'Two bid' system with technical and financial bids sealed separately. The bidder should put these two sealed envelopes in a bigger envelop duly sealed and submit the same to the Ministry or Department by the specified date and time at the specified place. On receipt, the technical proposals should be opened first by the Ministry or Department at the specified date, time and place.

**Rule 188:** Late Bids. Late bids i.e. bids received after the specified date and time of receipt should not be considered.

**Rule 189:** Evaluation of Technical Bids: Technical bids should be analysed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

**Rule 190:** Evaluation of Financial Bids of the technically qualified bidders: The Ministry or Department shall open the financial bids of only those bidders who have been declared technically qualified by the Consultancy Evaluation Committee as per Rule 189 above for

further analysis or evaluation and ranking and selecting the successful bidder for placement of the consultancy contract.

**Rule 191:** Methods of Selection/ Evaluation of Consultancy Proposals  
The basis of selection of the consultant shall follow any of the methods given in Rule 192 to 194 as appropriate for the circumstances in each case.

**Rule 192:** Quality and Cost Based Selection (QCBS): QCBS may be used for Procurement of consultancy services, where quality of consultancy is of prime concern.

- (i) In QCBS initially the quality of technical proposals is scored as per criteria announced in the RFP. Only those responsive proposals that have achieved at least minimum specified qualifying score in quality of technical proposal are considered further.
- (ii) After opening and scoring, the Financial proposals of responsive technically qualified bidders, a final combined score is arrived at by giving predefined relative weight ages for the score of quality of the technical proposal and the score of financial proposal.
- (iii) The RFP shall specify the minimum qualifying score for the quality of technical proposal and also the relative weight ages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-a-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc). The proposal with the highest weighted combined score (quality and cost) shall be selected. (iv) The weight age of the technical parameters i.e. non- financial parameters in no case should exceed 80 percent.

**Rule 193:** Least Cost System (LCS). LCS is appropriate for assignments of a standard or routine nature (such as audits and engineering design of non-complex works) where well established methodologies, practices and standards exist. Unlike QCBS, there is no weight age for Technical score in the final evaluation and the responsive technically qualified proposal with the lowest evaluated cost shall be selected.

**Rule 194:** Single Source Selection/Consultancy by nomination. The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

- (i) tasks that represent a natural continuation of previous work carried out by the firm;
- (ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance; and
- (iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.
- (iv) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.
- (v) It shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.

**Rule 195:** Monitoring the Contract. The Ministry/Department should be involved throughout in the conduct of consultancy, preferably by taking a task force approach and continuously monitoring the performance of the consultant(s) so that the output of the consultancy is in line with the Ministry /Department's objectives.

**Rule 196:** Public competition for Design of symbols/logos. Design competition should be conducted in a transparent, fair and objective manner. Wide publicity should be given to the competition so as to ensure that the information is accessible to all possible participants in the competition. This should include publication on the website of Ministry/Department concerned, as also the Central Public Procurement Portal. If the

selection has been by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

## B. OUTSOURCING OF SERVICES

**Rule 197:** "Non-Consulting Service" means any subject matter of procurement (which as distinguished from 'Consultancy Services'), involve physical, measurable deliverables/outcomes, where performance standards can be clearly identified and consistently applied, other than goods or works, except those incidental or consequential to the service, and includes maintenance, hiring of vehicle, outsourcing of building facilities management, security, photocopier service, janitor, office errand services, drilling, aerial photography, satellite imagery, mapping etc.

**Rule 198:** Procurement of Non-consulting Services. A Ministry or Department may procure certain non-consulting services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the following basic guidelines.

**Rule 199:** Identification of likely contractors. The Ministry or Department should prepare a list of likely and potential contractors on the basis of formal or informal enquiries from other Ministries or Departments and Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc.

**Rule 200:** Preparation of Tender enquiry. Ministry or Department should prepare a tender enquiry containing, inter alia :

- (i) The details of the work or service to be performed by the contractor;
- (ii) The facilities and the inputs which will be provided to the contractor by the Ministry or Department;
- (iii) Eligibility and qualification criteria to be met by the contractor for performing the required work/service; and
- (iv) The statutory and contractual obligations to be complied with by the contractor.

**Rule 201:** Invitation of Bids.

- (i) For estimated value of the non-consulting service up to Rupees ten lakhs or less: The Ministry or Department should scrutinise the preliminary list of likely contractors as identified as per Rule 199 above, decide the prima facie Eligible and capable contractors and issue limited tender enquiry to them asking for their offers by a specified date and time etc. as per standard practice. The number of the contractors so identified for issuing limited tender enquiry should be more than three.
- (ii) For estimated value of the non-consulting service above Rs.10 lakhs: The Ministry or Department should issue advertisement in such case should be given on Central Public Procurement Portal(CPPP)at [www.eprocure.gov.in](http://www.eprocure.gov.in) and on GeM. An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.

**Rule 202:** Late Bids. Late bids i.e. bids received after the specified date and time of receipt should not be considered.

**Rule 203:** Evaluation of Bids Received.

The Ministry or Department should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract.

**Rule 204:** Procurement of Non-consulting services by nomination. Should it become necessary, in an exceptional situation to procure a non-consulting service from a specifically chosen contractor, the Competent Authority in the Ministry or Department may do so in consultation with the Financial Adviser. In such cases the detailed justification, the circumstances leading to such procurement by choice and the special interest or purpose it shall serve, shall form an integral part of the proposal.

**Rule 205:** Monitoring the Contract. The Ministry or Department should be involved throughout in the conduct of the contract and continuously monitor the performance of the contractor.

**Rule 206:** Any circumstances which are not covered in Rule 198 to Rule 205 for procurement of non-consulting services, the procuring entity may refer Rule 135 to Rule 176 pertaining to procurement of goods and not to the procurement of consulting services.

## ANNEXURE 4: LESSONS FOR INDIA FROM UK AND CHINA

**While India has amended its GFR 2005 and notified GFR 2017 on 8 March 2017,** it is interesting to derive some key lessons from UK's Public Contracts Regulations (PCR) 2015 and China's Government Procurement Law (GPL) 2002 and Tendering Law (TL) 1999; especially on the seven core subjects that was taken up in this project.

China's experience of conflicts between multiple public procurement regulations confirms India's own learning experience that having a single overarching procurement law is necessary to achieving its objectives of having legal consistency and legal certainty in this field. Thus, it is imperative for India, to get passage through Parliament, of a single overarching Public Procurement law for maintaining integrity, fair play, competition, transparency, sustainability and appropriate market access in public procurement. This would ensure ease of doing business in the country, which is presently our prime focus for economic development.

### Coverage

**'In-house awards'** - Regulation 12 of PCR 2015 mentions where a contracting authority awards the contract to an entity which it controls, such a contract is exempt from the purview of the regulations. India's Public Procurement Bill (PPB) 2012 does not provide for this type of exemption, but the Consultation Note dated 21.7.2015 of the Ministry of Finance (MOF) has proposed in its paragraph 4 to exempt in-house awards in strategic purchases by Central Public Sector Enterprises (CPSEs) from their own subsidiaries/joint ventures from the operations of the legislation. **However, this has not materialized in GFR 2017.**

The economic logic for excluding in-house awards from coverage under public procurement law is that this would facilitate the procuring entities to buy items from their own subsidiaries without going into the formalities of a public tender and generate assured business opportunity for these subsidiaries.

In China procurement by government agencies at all levels and institutions using fiscal funds for construction works and goods and services listed in certain catalogues and above specified threshold levels are done under GPL and procurement of State enterprises, commonly regarded as public procurement are subject to existing regulations under TL. Procurement of State enterprises however, is not within the scope of "government procurement" defined by the GPL. The conflicts between the TL and the GPL, especially regarding coverage, remaining unresolved, the exact coverage of the public procurement regime in China is not clear<sup>2</sup>.

### Competition

**Competitive Dialogue** – Regulation 30 of the PCR 2015 provides that for particularly complex contracts, where a contracting authority is not able to define the technical means to satisfy its needs or is not able to identify in advance the legal and/or financial make up of a project, it can enter into a 'competitive dialogue'. Interested bidders then, after prequalifying, are invited to enter a dialogue with the contracting authority to identify and develop a solution. The dialogue may be conducted in successive stages, with the aim of arriving at the best solution/bidders. Final tenders are based on each tender's proposed solution. The contracting authority pursues negotiations **after** the confirmation of the contract award with the tenderer presenting the best price – quality ratio, with the purpose of confirming financial commitments or other terms contained in the tender.

Such a regulation is essential in the Indian context keeping in view the ever-growing technical complexities in goods / services / works which procuring entities are required to supply. Also, it would meet the complaints of many current and prospective tenders who believe that the specifications put out by Indian contracting authorities are in many cases either very vague, or so specific that they are biased towards particular suppliers, or that they do not consider latest technology or business solutions.



**It is a welcome sign that Rule 164 of GFR 2017 has reflected the Competitive Dialogue mode, vide the detailed discussion on this point in Annexure 1.**

**Abnormally Low Tenders** – Regulation 69 of the PCR 2015 provides that “Contracting authorities shall require tenders to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services”.

This provision may be useful for consideration in India, to meet the oft-cited complaint that there is over-emphasis on price criteria at the cost of quality in general. **It is a missed opportunity that GFR 2017 has not reflected this concern.**

**Conflict of Interest** – Conflict of interest is an important criterion to ensure fair competition in the procurement process. Section 45 of the PPB 2012 casts the obligation on the supplier to refrain from conflict of interest arising from engaging a former official of a procuring entity within a year after such former official was disassociated with a procurement in which the employer has an interest. Regulation 24 of PCR 2015 reverses the onus and puts it on the contracting authority (and not the bidder) to prevent distortion of competition through conflict of interest by specifically stating, “Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflict of interest arising in the conduct of procurement procedures to avoid any distortion of competition and to ensure equal treatment of all economic operators”.

While in China, in the sphere of competition in public procurement, conflicting provisions again mar clarity on the issue. Article 22 of the TL provides that “the procuring entity may, if necessary, consult experts or suppliers on the solicitation documents”. On the other hand, the GPL Article 77 states that the supplier is forbidden from negotiating with the procuring entity in tendering proceedings and such negotiations, if they occur, it will invalidate the procurement.

**It is a pity that GFR 2017 has not incorporated any provision for avoiding conflict of interest.**

## Transparency

PPB 2012 contains provisions by virtue of section 29 (4) that the Central Government “may make rules relating to electronic procurement and by notification, it may declare adoption of electronic procurement as compulsory for different stages and types of procurement”. Under section 34 of PPB 2012, a procuring entity may choose to procure through e-reverse auction under certain conditions. **The GFR 2017 also enshrines the transparency concept in its Rules 159, 160 and 167, vide detailed discussion in Annexure 1.** This enshrinement of digital systems in public procurement system puts India on par with global best practices in transparency in public procurement.

However, UK’s Regulation is more detailed and contains more safeguards in some aspects of digitized public procurement. The ‘Dynamic Purchasing System’ in PCR 2015 (Regulation 34), which is operated as ‘a completely electronic process’, has in-built safeguards to ensure that competition is not distorted due to electronic means of tendering, through a “digital divide” of some sort between more technically equipped suppliers’ vis-a-vis those less technically equipped by requiring certain safeguards. Regulation 22 (2), lays down that “the tools and devices to be used for communication by electronic means and their technical characteristics shall be nondiscriminatory, generally available and inter-operable, with the information and communication technology products in general use and shall not restrict economic operators’ access to the procurement procedure”.

Additionally, contracting authorities are not obliged to require electronic means of communication in the submission process where the use of means of communication other than electronic is necessary for the protection of information of a particularly sensitive nature which cannot be properly ensured by using electronic tools that are generally available [Regulation 22(5)]; the contracting authority is duty bound to “...ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved” [Regulation 22(11)].

## Market Access

**Non-discrimination** – Regulation 18 of PCR 2015 provides for non-discriminatory market access to all bidders, irrespective of nationality. In reality, the de jure market access accorded by this regulation is de facto restricted through non-tariff barriers of different sorts. In fact, during 2009-11, UK awarded only 1.3 percent of its public contracts by value directly to suppliers in other Member States of the EU.

The Section 11(1) of PPB 2012 provides for non-discrimination in market access to public contracts for all bidders, irrespective of nationality. However, Section 11 (2) gives the right, as an exception, to government to provide for mandatory procurement of any subject matter from a particular category of bidders / extending price preference to them only in exceptional circumstances, with the purpose of promotion of domestic industry / socio-economic policy of the government / any other consideration in public interest.

Since India does not itself produce much of the high value and high technology items needed in its public procurement, it is in its interest to retain the non-discriminatory market access clause, making no open distinction on grounds of nationality for access to the domestic public procurement market. Also, through our rights under the WTO Agreements, India can simultaneously use tariff and non-tariff barriers outside the public procurement law as and when justified, on the ground of compliance with Indian health, sanitary and technical standards, as also through the use of trade defense instruments, like anti-dumping or anti-subsidies action in justified circumstances.

Simultaneously, through the exceptions clause contained in sub-section (2) to section 11 of the Public procurement Bill 2012, preferential market access can be extended on the grounds of socioeconomic policy to MSMEs (as provided by Ministry of MSMEs vide 'Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012') and on the grounds of promotion of domestic industry to critical areas of technology, like information technology, telecommunications,

solar energy equipment etc. Such action will not be contrary to India's WTO obligations, since the WTO Agreement does not include any obligations on government procurement (India has only an 'Observer' status in Government Procurement Agreement).

**In GFR 2017, as a general rule, the public procurement market is open to foreign participation only in exceptional circumstances, i.e., when goods of the required quality/specifications are not available domestically or it is necessary to look for suitable competitive offers from abroad, vide Rule 161(iv), which has been discussed in Annexure 1. But it is the prerogative of a government as to whether and to what degree its government procurement market should be kept open to foreign participation.**

**However, purchase and price preference option for encouraging domestic industry, promotion of socio-economic policy of the government and for achieving other public interest goals is enshrined in Rules 153(ii) and (iii) of GFR 2017, vide detailed discussion in Annexure 1.**

In China, the case is just the opposite, with domestic preference the rule, vide section 10 of GPL, with access to foreign suppliers being extended only on exceptional grounds, such as when the needed items cannot be procured domestically / on reasonable commercial terms and conditions. The TL gives domestic industry even more scope, with Tendering Regulation 8 providing that domestic suppliers participating in public contracts must supply domestic goods and services, except in certain exceptional circumstances.

## Grievance Review and Redressal

In this area, both India and China have to learn from each other. Section 41 of PPB 2012 provides for Central Government to constitute "independent procurement redressal committees" under the chairmanship of a retired Judge of a High Court. In China, in contrast, the Ministry of Finance (MOF) and its various branches at different levels of the administration

oversee redressal of complaints. The MOF can hardly be called an 'independent' agent in the procurement process, as it is finally the 'cashier' which has to pay for the procurement orders.

The absence of an independent challenge mechanism deprives the Chinese procurement regime of credibility and in actual operation and discourages aggrieved parties to go for bid challenge. However, where the Chinese model is praiseworthy is the fact that the decision of the review body is binding. It can mandatorily order remedies such as correction of procurement documents, declaring the procurement unlawful followed by re-tendering, order payment of compensation etc. In India, the weakness of the review process lies in that the review authority can only "communicate its recommendations, including the corrective measures to be taken, to the procuring entity and to the applicant" under section 41 (8) of the Public Procurement Bill, 2012.

**The GFR 2017 has missed the opportunity to provide for a viable dispute settlement mechanism, although the blueprint for the same was available in the Public Procurement Bill, 2012.**

### Probity and Penal Provisions

Exclusion of bidders is very much linked to prevention of misconduct under India's PPB 2012. Under section 12 of PPB, 'Qualification of bidders' is subject to certain probity concerns, like filing of tax returns to Central Government, not being insolvent / bankrupt, not being subject to legal proceedings for any of the above, not being guilty of professional misconduct nor misrepresentation of their qualifications with reference to a procurement process. Over and above this, section 6 of the PPB provides for a Code of Integrity which is binding on the procuring entity and bidders, and non-compliance with this Code may lead to exclusion of the bidder from the procurement process. The offences under the Code of Integrity include the offering, soliciting or accepting of illegal gratification to influence the procurement process; indulging in anticompetitive behavior like collusion or bid-rigging; threats to

influence the procurement process; obstruction of any investigation and / or conflict of interest in the procurement process, among others.

On the other hand, the list of mandatory and discretionary exclusions under the UK PCR 2015 is much wider and can include offences beyond those related to public procurement, vide Regulation 57. This ranges from conspiracy to corruption under the laws of the land, offences listed under the Counter Terrorism Act 2008 and offences under the Sexual Offences Act, 2003.

The UK Regulation is also more nuanced on when to impose exclusion. The obligation to use exclusion may be disregarded, where it would be clearly disproportionate. For example, where minor amounts of taxes/social security contributions are unpaid.

**The GFR 2017 prescribes debarment from bidding in its Rule 151 as the only sanction, for breach of the Code of Integrity prescribed in its Rule 175 or for conviction under certain criminal laws. Detailed discussion on this point is there in Annexure 1.**

### Green Public Procurement

Through PPB 2012 Section 21 (1), India has taken a bold new step in GPP by including "environmental characteristics" of the subject matter as one of the evaluation criteria. However, better articulation of GPP in our law could perhaps be made through integrating the concept of life-cycle costs, as elaborated in Regulation 67 and 68 of the UK PCR 2015, which involves consideration of costs of use, such as consumption of energy and other resources, collection and re-cycling costs, costs imputed to environmental externalities like cost of emission of greenhouse gases and other climate change mitigation costs during the life-cycle of the subject matter of procurement.

The eco-labeling concept contained in Regulation 43 of UK legislation, as a means of proof that the required environmental characteristics are provided for in the subject matter of procurement, can also be integrated into our approach on GPP to strengthen it.



For the above changes to come about, the bias in India against higher capital costs usually linked to sustainable alternatives, which has generally stood in the way of the introduction of green procurement, must be gradually removed.

**However, it is a welcome signal that GFR 2017 has introduced some concepts of green public procurement through its Rules 173(x) and (xvi).**

## NOTES

## About United Nations Global Compact (UNGC)

The United Nations Global Compact (UNGC) is a strategy policy initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. The UN Global Compact is a principle based framework for businesses, stating Ten Universal Principles in the areas of Human Rights, Labour, Environment and Anti-corruption. With more than 12,000+ corporate participants and other stakeholders in over 170 countries, the UNGC provides a practical framework for companies that are committed to sustainability and responsible business practices with two objectives: "Mainstream the ten principles in business activities around the world" and "Catalyse actions in support of broader UN goals including Sustainable Development Goals (SDGs)".

## About Global Compact Network India

Global Compact Network India (GCNI), formed in November 2000, was registered in 2003 as a non-profit society to function as the Indian Local Network of the UN Global Compact, New York. It is the first Local Network in the world to be established with full legal recognition. It also serves as a country level platform for businesses, civil society organisations, public and private sector and aids in aligning stakeholders' responsible practices towards the Ten Universally Accepted Principles of UNGC in the areas of Human Rights, Labour, Environment and Anti – corruption, broad UN goals including Sustainable Development Goals and other key sister initiatives of the United Nations and its systems. At present, the India Network ranks among the top 10, out of more than 103 Local Networks in the world, with a pan India membership of 250 leading business and non business participants and 352 signatories, strengthening their commitment to the UN Global Compact Principles and Sustainable Development Goals.

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## About Centre of Excellence for Governance, Ethics and Transparency (CEGET)

The CEGET has been established on 1st March 2015, with a vision to develop pragmatic approaches around the 10th UNGC Principle to challenging business decisions and to "establish premier knowledge repository that conducts innovative action research & training, provide a platform for dialogue & communication, and facilitate systematic policy initiatives for strengthening transparency and ethics in business". Key activities of CEGET include creation of a Knowledge Hub, enabling platforms to businesses, policymakers, civil society, industry associations, UN agencies and academia and improving organizational decision making through a stakeholder management framework that integrates transparency and integrity.

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**Global Compact**  
Network India

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