

**FRAMEWORK AND SYSTEM GOVERNING PUBLIC
PROCUREMENT WITH SPECIAL REFERENCE TO PROCUREMENT
STRATGEY FOR EARLY CHILDHOOD DEVELOPMENT FOR
BETTER LEARNING ENVIRONMENT**

Ms. Namita Jain,

Ph.D. Scholar and Assistant Professor, School of Law, JECRC University, Jaipur, Rajasthan.

Prof. Mahesh Koolwal,

Dean, School of Law, JECRC University, Jaipur, Rajasthan.

ABSTRACT

The current study evaluates India's public procurement system and recent reform measures, as well as the necessity for organizational improvements. The research paper also focuses on policy for children development through government procurement strategy. Numerous challenges plague India's public procurement efforts, including scattered processes and laws, a lack of openness, pervasive inefficiencies, and a shortage of procurement specialists. Modern efforts to create a consistent and transparent public procurement process have failed to produce the expected outcomes. The advent of e-procurement as a critical instrument in combining government services distribution and effective governance, on the other hand, indicates some progress toward a visible, responsible, and efficient procurement regime. Despite the fact that General Financial Rules (GFRs) and other procurement guidelines are thorough, they must be supported by legislative authority.

Key Words: Public Procurement, Institutional Mechanism, Early Childhood, Procurement Reform of India.

INTRODUCTION

Due to its critical position in public financial management (PFM) processes, academics and legislators have paid more emphasis to public procurement challenges in consecutive decades. A well and effective public procurement mechanism eliminates inefficiencies, fraud, and loss, and thereby aids progress by enhancing public management. Addressing the nation's budgetary obligations requires a smart and effective distribution of government spending (public procurement). Indeed, a good public procurement process is not just ethical, but also economically and socially beneficial. Notwithstanding its rise to prominence as a critical

component of effective administration, India's public procurement system remains to be plagued by flaws. Over the previous few generations, the government has implemented a number of systemic reforms in order to maximize the worth of public spending. Nevertheless, procurement restructuring measures have failed to produce the expected benefits.

Around the globe, public procurement provides for a large amount of public spending. Defense, Railways, and Telecommunications are just a handful of the Union departments that spend around half of their resources on public procurement. Given the significant amount of money spent on purchasing by the government, simplifying the procuring procedure in the nation has considered critical. In contrast to many other nations, India lacks a complete procurement law, and the nation's procurement process looks to be scattered and uneven in respect of laws, legislation, and protocols.

Considering this context, the current paper aims to evaluate the organizational mechanisms, problems, and change approaches in Indian public procurement with special reference to procurement strategy by government for early childhood education and development. The compliance of existing laws and regulations with the core concepts of public procurement is examined in India's present procurement environment. The research also highlights the need for more improvements to solve the present procurement system's flaws and issues.

NATURE OF PUBLIC PROCUREMENT

Public procurement is the purchase of products or commodities by various governmental bodies such as ministry and divisions for the provision of public operations, and it includes everything from assessing procurement requirements through contract awards and ultimate payments. By assisting an institution in making suitable budgeting judgments and recognizing essential investment possibilities, an effective procurement system looks to be a significant aspect of public spending management systems. However, many nations' procurement processes are hampered by a number of barriers, and the demand for changes is gaining traction among stakeholders such as procuring organizations, legislators, and procurement specialists.

In subsequent times, public procurement from domestic suppliers, particularly small and micro businesses (MSEs), has become more important in many nations. MSEs must be promoted because of their potential for development through innovation, competitiveness, and intrinsic job prospects. Notwithstanding such legislative measures, MSMEs' engagement in public procurement is significantly smaller; notwithstanding their large contribute to GDP

in many nations. The key problems in this respect seem to be a shortage of human capabilities, a shortage of accessibility to technology and information, a lack of financial resources, and so on.

Few studies have focused on entering overseas economies for public procurement under the WTO's Government Procurement Agreement (GPA). The primary elements in this respect include enabling multinational companies to participate in public procurement operations and standardizing procurement regulations among nations. India, too, is liberalizing its procurement practices by gaining exposure to overseas economies, and it's been a WTO GPA spectator since 2010. Therefore, before becoming a full member of the GPA, it must increase the profitability of domestic suppliers.

PUBLIC PROCUREMENT IN INDIA

Given India's federal framework for public service distribution, the public procurement procedure is highly complicated. The constitutional provisions for providing public facilities throughout the Union and State governments, autonomous and statutory organizations, public sector undertakings (PSUs), and city municipalities (panchayats and municipalities) requires a wide variety of criteria. Because India lacks an unified public procurement legislation to guide procurement operations, the system has gotten more complicated. General Financial Rules (GFRs) allow government organizations to perform procurement operations autonomously in the lacking of a complete statute.

Whereas the fundamental objectives of public procurement are upheld, the process has culminated in a disparity in the country's procurement method. Several organizations, including the Departments of Defense, Railways, and Telecommunications, as well as the Public Works Department (PWD) and the Directorate General of Supplies and Disposal (DGS&D), release their own procurement guidelines to manage public procurement. Furthermore, the Indian system is designed to achieve macroeconomic improvement goals, such as the encouragement of MSEs through pricing and purchasing preferences, as well as the reserving of sector-specific items. Various interpretation of laws and guidelines at the authority of procurement organizations result in complexity.¹

Constitutional rules, statutory measures, administrative norms, and overseers are the four basic aspects of India's public procurement architecture. Articles 298, 299, 300, and 300A of

¹Recently, Himachal Pradesh, Kerala, and Delhi have released their respective draft procurement policy for public consultation

the Constitution provide the administration the authority to contract for goods and services. Likewise, Article 246 divides the legislative authority of India's federal government into three categories: Union List, State List, and Concurrent List. While Article 355 governs executive power, Article 282 governs fiscal autonomy in government expenditures. It also makes no recommendations for public procurement principles, regulations, or protocols.

In the nonattendance of a committed procurement law at the Union level, numerous procurement guidelines and legislation are governed by the Contract Act 1872, Sale of Goods Act 1930, CAG's Duties, Powers and Conditions of Service Act 1971, Prevention of Corruption Act 1988, Arbitration and Conciliation Act 1996, Information Technology Act 2000, Competitions Act 2002, Central Vigilance Commission Act 2003, Right to Information Act 2005, and other statutes.

Except for this, a few states, like Tamil Nadu, Karnataka, Rajasthan, Andhra Pradesh, and Assam, have their unique procurement laws in place to conduct state-level public procurement. The Ministry of Finance has made adjustments to the public procurement laws and regulations on a regular basis in order to improve administrative effectiveness.

The GFRs explain the administrative requirements for public procurement operations in overall. In addition to GFRs, the Ministry of Finance releases distinct procurement guidelines with regulations and processes for work contracts, commodities purchases, and consultant hires. Likewise, the Delegation of Financial Power Rules (DFPR) of 1978 was created to comply with the constitutional restrictions mentioned in Article 288. The DFPR applauds the multiple levels of government's expenditures autonomy for decentralized procurement.²

Procurement Strategy for Education specially early childhood development

The end users of every procured product is humans and over many years government focus on sustainable products like use of products that are less in carbon or use of products that are available locally. We all know children's are future of nation and procuring goods and services for their betterment is paramount. Children spend an estimated nine forty hours in school annually and are vulnerable to many poor things like indoor air quality and chemical exposure due to their growing, developing brains and bodies.³

²The Arbitration & Conciliation Act 1996, India

³ <https://naturalpod.com/procurement-strategies-for-better-learning-environments/> (accessed on 25th june,2022)

In order to advance wellness and better health, procuring goods used in schools which are eco friendly is a best way to achieve sustainable development. When children's are concerned, it is imperative to select products that are environmental friendly so early childhood is developed to its best potential.

The important question is to understand how schools specially government schools can take steps to procure and purchase goods that supports healthy indoor environmental standards. Following steps can be taken which might lead to better environment for early childhood development through procurement strategy:

1. Eco Friendly products that support indoor good quality air: It is evidence based study that supports that every day cocktail of gases are being consumed by kids in schools whether they are playing indoors or outdoors. From school supplies to personal care items everything contributes to the young lungs of a child. By purchasing low-emitting products can help to minimize the effects of poor Air in the indoor area. A research even suggested that the productivity of young minds can be enhanced through good quality Air .

2. Not to purchase from companies employing child labour, nor manufacturers of land mines and their components: UNICEF follows the common guidelines for procurement by organizations in the UN System which clearly mentions that do not purchase from those companies that employ child labour as this policy will given fruitful result in future.

3. Non –Toxic Products: In order to avoid any unseen health hazard it is nowadays crucial that government procure goods that are non-toxis. Duly certified products by certifying authority can be made compulsory in schools along with it submission of hazard based disclosure form from the sellers will help to deal with toxic products.

ELECTRONIC PORTALS FOR PUBLIC PROCUREMENT IN INDIA

Information technology (e-procurement) has been emphasised by the Indian government as a technique for increasing public procurement openness, efficacy, and accountability. GFR 2017 mandates the use of CPPP and GeM by procurement companies. Apart from that, individual states have been using their own level e-procurement websites with the support of the National Informatics Centre (NIC). The Indian Railways also uses IREPS to conduct e-procurement.

CENTRAL PUBLIC PROCUREMENT PORTAL

With the introduction of the Indian Government Tenders Information System, often known as 'Tenders India,' adoption of e-procurement and e-payments to cut costs and enhance productivity in public procurement received a boost⁴. This was created by NIC in collaboration with the Deity to make government bids more accessible. In January 2011, a Committee on Public Procurement (CoPP) was established to recommend steps to ensure openness, effectiveness, and economics in the country's public procurement operations. NIC established CPPP in response to the CoPP's suggestions. The CPPP offers procurement entities with an e-platform to issue and approve tenders and related documents, as well as free access to bid papers, bid submission, correspondence for explanations, and bid closure.

Government E-Marketing

In August 2016, the DGS&D launched Government e-Marketing (GeM), an end-to-end e-portal for common-use products and services. In April 2017, a full-fledged GeM was authorised as a successor for the DGS&D. The DGS&D provides an item-by-item list of products and services to be obtained through GeM on a regular basis. As a result, potential providers create an account on the platform. ⁵Procuring organizations are asked to project their yearly procurement plans and submit them to DGS&D for display on GeM. For procurements of up to INR 30 lakhs, an entity chooses a supplier based on the lowest pricing accessible on the platform, however for procurements worth more than INR 30 lakhs, it employs bid/reverse auction . Payment is done electronically when the entity receives the products and services.⁶

GREEN PUBLIC PROCUREMENT IN INDIA

GPP (Green Public Buying) is a reaction to environmental change challenges and the promotion of sustainability advancement initiatives through environmentally friendly purchasing. GPP's adventure in India began in 1991 with the establishment of EcoMark, which aimed to raise customer understanding of environmentally friendly goods and services, as well as governmental equipment.

Various procurement bodies have made attempts toward GPP from time to time, which can be called work-in-progress. In this sense, contemporary bid contracts, particularly building

⁴http://mof.gov.in/the_ministry/dept_expenditure/notification/misc/ExpManag.pdf (accessed: 15 December 2021)

⁵GeM won South Asia Procurement Innovation Awards 2016-17 awarded jointly by the Asian Development Bank, The World Bank, and Procurement iNET

⁶<https://pib.gov.in/newsite/PrintRelease.aspx?relid=160965> (Accessed: 14th December 2021)

tenders, have begun to include language linked to environmental issues. Several organisations, including Indian Railways, National Thermal Power Corporation, Bharat Heavy Electricals Limited, and Indian Oil Corporation, have begun to incorporate ecological and power effectiveness requirements into their procurement decisions, such as the phase-out of incandescent lamps (2000), the assertion on purchasing Bureau of Energy Efficiency (BEE) three-star or higher star products (2007), the migratory from CFC to HFC refrigeration (2008), and the advancement and adaptation of low-carbon technologies (2010). However, these initiatives are often undertaken in isolation, on an ad hoc basis, and have yet to be replicated on a broader scale among public procurement institutions.

ISSUES IN THE PUBLIC PROCUREMENT IN INDIA

In attempt to get the intended results from budgetary disbursements in India, an organized and comprehensive public procurement system is required, along with strict and continuous adherence to the mandated laws and guidelines. Due to obstacles such as inadequate supervision, insufficient responsibility and management, poor awareness, and organizational culture, procurement processes in the nation frequently diverge from what is required. The significant issues that the Indian public procurement system has faced are listed below.

The Absence of a comprehensive procurement Act

GFRs allow government organisations to construct procurement processes based on their own perceptions of public interest in the absence of a formal procurement Act. It has evolved in disparate methods and a plethora of rules among procurement bodies. Despite the fact that GFRs and other procurement guidelines are comprehensive, in the lack of legislative support, they are vulnerable to unscrupulous practises. In the lacking of solid regulation, pursuing comprehensive proceedings against the stakeholders implicated in unfair activities might be difficult.

Lack of Standard bid documents

Despite the efforts of international bodies such as the IMF and the World Bank to standardise bid papers and contractual codes, there is still a diversity of bid documents between organizations in aspects of addition/replacement/repetition of clauses/provisions. The bid documents' inconsistencies and inconsistencies go against the values of standardization, openness, and responsibility. GFR 2017 requests that the assessment criteria upon which

proposals must be evaluated be clarified. Even yet, many bid agreements are unclear about the assessment standards, which adds to the review process's complexities.

Delays in activities in procurement cycle

The use of e-procurement has resulted in a shorter procurement process, particularly throughout the phases of bid publication, submission, opening, and assessment. Furthermore, the requirement assessment, budget preparation, and authorization stages of the procurement process are frequently postponed. Likewise, delays in drafting technological requirements are sometimes attributed to a lack of adequate procurement specialists and the failure to realise essential information. Other difficulties, including as proper need assessments, participation of individuals who are most impacted in building procurements, and environmental impact assessment, are frequently disregarded. Acquiring land delays and regulatory/administrative permissions from different agencies wreak havoc on building and infrastructure projects.

Low participation of the domestic MSEs

Despite the MSE regulations, domestic MSE involvement in public procurement operations in India remains limited. Aside from resource-related entrance hurdles, such as anti-competitive components, many MSEs avoid public procurement because they believe government purchasing institutions are slow to release contractual payment. The financial soundness of MSEs is influenced by this impression.

TOWARDS A TRANSPARENT AND EFFICIENT PROCUREMENT REGIME IN INDIA

In the previous several years, some reforms attempts have been done in India to streamline the public procurement environment, especially the newest GFRs 2017. In May 2017, the Ministry of Finance issued amended guidelines for procurement of products and service, and the government is set to publish an updated handbook for procurement of works, all in compliance with the GFRs 2017. These measures demonstrate India's commitment to an open, responsible, and robust public procurement system. According to the Work Bank (2017) study, India's public procurement mechanism has made significant development toward transparency in recent times. Furthermore, the institution has failed to develop the highest standards necessary to compete with nations such as Australia and Singapore. The government should work more to improve the procurement system's openness, responsibility, affordability, and effectiveness.

Education and experience to the finest procurement methods utilised in advanced nations as well as international bodies should improve the procurement expertise and capacity of the pertinent personnel. Officials should also be driven to guarantee that public procurement is conducted ethically. The CCI and CVC assist procurement organisations in identifying anti-competitive components and implementing remedies, but these efforts could be more coordinated.

CONCLUSIONS

The current study evaluates India's public procurement system and social framework measures, as well as the need for organizational improvements. GFRs presently control the majority of the country's governmental procurement activity. Due to the variability of needs in the federal structure of government operations and the lack of a comprehensive procurement Legislation, the existing process seems to be complicated. Some severe flaws in the system include scattered processes and norms, a shortage of standardized bid papers, a shortage of procurement specialists, a lack of openness, pervasive corruption, and the absence of an impartial complaint resolution structure. A series of reforms aimed at developing a visible, responsible, and competitive procurement system have indeed been implemented in recent years, although they are still considered work in development.

In terms of procuring strategy for early childhood development, India is far behind the developed nations and needs lot of research and study as to how it is important to procure goods that are safer and healthier for the young minds which are future of Nation.

Significant accomplishments have been achieved toward developing a proper procurement procedure, such as with the adoption of e-procurement, competitive tendering as the preferable method, preferential guidelines, anti-competitive restrictions, and so on, but the process is still not up to par. Despite the fact that GFRs and procurement guides contain various measures aimed at standardising the country's procurement system, public procurement is subject to unfair practises in the lack of a complete law. As a result, these must be backed by legislative authority, and the Draft Bill 2012 should be approved with some changes.