

Compliance with Provisions of Public Procurement Policy, 2012 For Micro and Small Enterprises

7.1 Introduction

Government of India enacted the Micro, Small and Medium Enterprises Development Act (MSME Act.), 2006 which came into effect from June 2006. As per section 11 of MSME Act, 2006, the Central or State Government may, by order notify, from time to time, preference policies in respect of procurement of goods and services produced and provided by MSME⁶⁷s, to be followed by its Ministries/ Departments/ aided institutions/ Public Sector Enterprises. Accordingly, the Central Government, notified 'Public Procurement Policy for Micro and Small Enterprises Order', which came into effect from 1 April 2012 and became mandatory w.e.f. 1 April 2015.

The salient features of the Policy were:

- Every CPSEs shall set an annual target for 20 *per cent* procurement from Micro and Small Enterprises (MSEs) Sector. Overall procurement goal of minimum 20 *per cent* with a sub-target of 4 *per cent* out of 20 *per cent* was earmarked for procurement from MSEs owned by SC/ST entrepreneurs became mandatory from 1 April 2015.
- MSEs quoting price within price band L1 + 15 *per cent*, when L1 is other than MSEs, would be allowed to supply 20 *per cent* of the tendered value at L1 price, subject to lowering of price by MSE to L1.
- For enhancing participation of MSEs in government procurement, CPSEs would conduct Vendor Development Programmes or Buyer Seller Meets for MSEs especially for SC/ST entrepreneurs.

7.2 Audit Objective

The audit objective was to examine whether the provisions of Public Procurement Policy, 2012 for Micro and Small Enterprises were being complied with effectively.

⁶⁷ *Public Procurement Policy was applicable for Micro and Small Enterprises only*

7.3 Audit Scope

Audit selected a sample of 18⁶⁸ Central Public Sector Enterprises (CPSEs) to review compliance with the Public Procurement Policy for MSEs by these CPSEs during 2012-13 to 2016-17.

7.4 Audit Criteria

Audit criteria included, provisions of MSME (Development) Act, 2006, Public Procurement Policy Order, 2012, notified by Ministry of Micro, Small and Medium Enterprises on 23 March 2012 and Circulars/instructions issued by O/o Development Commissioner [DC (MSME)] from time to time.

7.5 Audit Findings

7.5.1 Mandatory procurement from MSEs

As per clause 3 of Public Procurement Policy Order, 2012, CPSEs were mandatorily required to procure a minimum of 20 *per cent* of their total procurement from MSEs w.e.f. 1 April 2015. Clause 4 of the policy earmarked a sub target of 20 *per cent* (i.e., 4 *per cent* of the total procurement) procurement from MSEs owned by SC/ST entrepreneurs.

Compliance with this clause was checked in the 18 selected CPSEs and the following were observed:

- a) As per the information provided by the CPSEs, out of 18 selected CPSEs 7 had achieved the target of minimum of 20 *per cent* of their total procurement from MSEs during 2015-16 and 2016-17 (mandatory period).
- b) On further examination, it was observed that the Development Commissioner (MSME) had clarified (March 2016) to all CPSEs that the cost of any item could not be excluded while computing the total procurement made by them during the year. Yet, 9 out of the 18 CPSEs examined in Audit had excluded significant items⁶⁹ ranging between 27 *per cent* and 96 *per cent* of their total annual procurement, while reporting compliance with the Public Procurement Policy

⁶⁸ *Oil and Natural Gas Corporation Ltd. (ONGC), Bharat Heavy Electricals Ltd. (BHEL), Indian Oil Corporation Ltd. (IOCL), Hindustan Petroleum Corporation Ltd. (HPCL), Bharat Petroleum Corporation Ltd. (BPCL), National Thermal Power Corporation Ltd. (NTPC), Rashtriya Ispat Nigam Ltd.(RINL), National Handloom Development Corporation Ltd. (NHDC), Gas Authority of India Ltd. (GAIL), Cochin Shipyard Ltd. (CSL), National Mineral Development Corporation Ltd. (NMDC), Neyveli Lignite Corporation Ltd. (NLC), Steel Authority of India Ltd. (SAIL), Balmer Lawrie & Company Ltd., National Aluminium Company Ltd. (NALCO), Numligarh Refinery Ltd. (NRL), Oil India Ltd. (OIL) and Coal India Ltd. (CIL)*

⁶⁹ *Items excluded by CPSEs were fuel, steel, cement, Iron ore, cooking coal, Boiler Coal, imported petrol, diesel, lubricants, compressors, turbines, boiler, Conveyor Belts, Furnace Oil etc.*

Order, 2012, during the years 2015-16 and 2016-17 as shown in the Table given below:

Table: 7.1**Percentage of items excluded while reporting mandatory procurement from MSEs****(₹ in crore)**

Name of CPSEs	2015-16			2016-17		
	Actual total annual procurement made during the year 2015-16	Value of items/material excluded from total annual procurement	Percentage of excluded items over total procurement	Actual total annual procurement made during the year 2016-17	Value of items/material excluded from total annual procurement	Percentage of excluded items over total procurement
NTPC	108414.29	103948.80	95.88	88527.70	84549.30	95.50
RINL	10500.96	8994.69	85.65	10459.42	8310.57	79.45
NMDC	378.41	264.56	69.91	356.85	259.17	72.62
SAIL	7750.98	4539.05	58.56	7431.53	4185.11	56.31
GAIL	2793.74	777.74	27.83	4756.98	1618.20	34.01
Balmer Lawrie	2253.66	2171.30	96.34	2438.04	2320.03	95.15
NRL	6498.43	6076.23	93.50	6905.16	6447.32	93.36
IOCL	NA	NA	NA	24297.93	10787.56	44.39
NLC	Not provided	Not provided	NA	652.44	326.11	49.98

As per the records made available to audit, six of these nine CPSEs had sought exemption from Review Committee for excluding the items from total annual procurement. However, RINL alone was granted exemption by the Review Committee in July 2016 with the condition that RINL will at least make 35 per cent to 40 per cent procurement of the balance from MSEs, against which RINL could achieve only 25 per cent during 2016-17.

- c) Out of remaining nine CPSEs, six CPSEs (BHEL, HPCL, NHDC, NALCO, CSL, and BPCL) had achieved the target of 20 per cent procurement from MSEs while three CPSEs (ONGC, OIL, CIL) procured five per cent to 15 per cent from MSEs. It was also noticed that none of the selected 18 CPSEs had achieved the target of 4 per cent annual procurement from MSEs owned by SC/ST entrepreneurs.
- d) Clause 3(4) of the Policy envisaged that the CPSEs which fail to meet the annual procurement target from MSEs shall substantiate with reasons to the Review Committee headed by Secretary, Ministry of MSME. A scrutiny of the minutes of the Review Committee meetings revealed that none of the CPSEs which had failed to achieve the procurement targets had furnished reasons to the Review Committee.

The following reasons were cited for exclusion of items by CPSEs:

- Items like steel, cement, compressor, turbines, heat exchanger, air intake systems, Boiler, furnace, Conveyor Belts etc. and mineable materials like Iron ore, boiler coal, coking coal, dolomite, and limestone were not manufactured by MSEs.
- OEM spares are also essentially to be procured from OEMs. Further, the Management of GAIL stated (October 2017) that the matter of excluding items while calculating 20 *per cent* mandatory procurement from MSEs had been taken up with the Ministry. However, Ministry's approval was awaited. IOCL Management stated (October 2017) that crude petroleum and oil products were excluded from total procurement in oil sector CPSE, which were highlighted and accepted at various fora in which senior officials of MSMEs and Ministry of Petroleum and Natural Gas were present.

DC (MSME) in its reply (October 2017) stated that under the Public Procurement Policy, it has no power to penalise the procuring agencies for failing to achieve the mandatory target of 20 *per cent* and the sub-target of four *per cent* of the procurement from MSE. DC(MSME) stressed that CPSEs are controlled by Department of Public Enterprises (DPE) and on failing to achieve the procurement target from MSEs, the rating of CPSEs are downgraded by DPE.

Although, DPE had downgraded the MOU rating of 15 CPSEs⁷⁰ by one mark during 2015-16 as they had failed to comply with the provisions of the policy, this did not significantly affect the performance of the CPSEs. Out of these 15 CPSEs, the performance of 9⁷¹ continued to be poor during 2016-17.

Recommendation-The Ministry of MSME should review the policy in light of aforesaid difficulties faced by CPSEs in implementation of the Policy.

7.5.2 Outstanding payables to MSE units

As per section 15 of the MSME Act 2006 where any MSE supplier supplies goods or renders services to a buyer, the buyer should make payment on or before the date agreed upon between the buyer and the supplier, provided that in no case, the period agreed upon should exceed 45 days from the date of acceptance. The Act further provides that if the buyer fails to make payment of the amount to the supplier, the buyer would be liable to pay compound interest from the appointed day. Further, the notification dated 4 September 2015 of Ministry of Corporate Affairs made it mandatory for all CPSEs to disclose the details of trade payables to MSEs in the notes to their financial statements.

⁷⁰ ONGC, BHEL, CIL, IOCL, NRL, HPCL, BPCL, NTPC, NHDC, GAIL, OIL, CSL, NMDC, NLC and SAIL (15 CPSEs)

⁷¹ ONGC, CIL, IOCL, NRL, NTPC, GAIL, OIL, NMDC and SAIL (09 CPSEs)

Audit noticed that out of the 18 CPSEs examined, eight had significant outstanding dues payable to MSE vendors. The amounts outstanding with these CPSEs, as on 31 March 2017, are tabulated below:

Table: 7.2
Outstanding dues payables to MSEs

(₹ in crore)

S. No.	Name of CPSE	Principal amount outstanding with CPSEs to be paid to MSEs (As on 31 March 2017)
1.	NTPC	347.98
2.	BHEL	233.43
3.	IOCL	46.72
4.	SAIL	38.12
5.	ONGC	12.15
6.	NLC	8.84
7.	BPCL	0.47
8.	Balmer Lawrie	1.05
	Total	688.76

- NTPC's Outstanding amount includes ₹243.18 crore outstanding for less than one year (company did not provide break of amount outstanding for more than 45 days and less than one year), ₹79.43 crore outstanding for one to three years, ₹25.37 crore outstanding for more than three years and ₹0.11 crore outstanding towards interest.
- The amount outstanding for more than 45 days in SAIL, NLC, Balmer Lawrie, IOCL and BPCL are ₹6.46 Crore, ₹2.34 crore, ₹0.11 crore, ₹0.01 crore and ₹0.47 crore respectively. Balmer Lawrie's outstanding amount includes interest amount only.
- BHEL and ONGC did not provide break of outstanding amount more than 45 days.

Audit noticed that the reasons for outstanding amounts were non-registration of MSEs, improper billing, non-release of retention money and security deposit, etc.

NTPC Management stated (November 2017) that all stations/projects had been advised to expedite payment to MSEs, in term of contracts.

Recommendation: The Ministry of MSME should instruct the CPSEs to modify the procedure so that timely payment is released to MSEs.

7.5.3 Vendor Development Programmes conducted by CPSEs

Clause 9 of the Public Procurement Policy Order, 2012, states that Special Vendor Development Programmes or Buyer Seller meet was to be conducted by CPSEs for enhancing participation of MSEs including those owned by SC/ST in procurement.

Few Vendor Development Programmes have been carried out by the CPSEs. ONGC did not furnish information regarding Vendor Development Programmes for MSEs while Balmer Lawrie did not conduct any programme and RINL conducted only one programme over the five year (2012-17). It was noticed that on the advice of NITI Aayog, an instruction had been issued by DC(MSME) in May 2016 to CPSEs procuring goods & services valuing more than ₹100 crore in a financial year, to conduct special vendor development programme including one exclusively for SC/ST entrepreneurs. Despite these instructions, eight out of 18 CPSEs had not conducted any vendor development programme for SC/ST entrepreneurs.

DC (MSME) stated in reply (October 2017) that reminder letters had been circulated to sensitise the CPSEs from time to time, to develop appropriate vendors.

Recommendation: Ministry should incorporate turnover-wise minimum target for conducting vendor development program.

7.5.4 Purchase preference to MSEs

Clause 6 of the Public Procurement Policy Order, 2012, states that MSEs participating in a tender and quoting a price within the price band of L1+15 *per cent*, shall be allowed to supply a portion of tendered requirement at L1 price where the L1 vendor is other than MSE. Such MSEs shall be allowed to supply 20 *per cent* of the total tendered value.

Scrutiny of records revealed that 11 CPSEs namely GAIL, CIL, NALCO, Balmer Lawrie, ONGC, BPCL NHDC, NLC, NMDC, SAIL and OIL had adhered to this clause. A total of 5553⁷² MSEs were benefitted during 2012-13 to 2016-17 due to following the Purchase Preference clause of the Policy by the CPSEs mentioned above.

Out of balance seven CPSEs, six CPSEs namely, IOCL, BHEL, HPCL, NTPC, RINL and NRL did not maintain information regarding purchase preference to MSEs while one namely CSL did not implement it.

7.5.5 Procurement of reserved items from Non-MSE Vendors

Clause 11 of the Public Procurement Policy Order, 2012, states that CPSEs should procure 358 items from MSEs. These items had been reserved for exclusive purchase from MSEs to support their promotion and growth. DC (MSME) provided respective ITCHS codes⁷³ for the 350 items to be exclusively procured from MSEs.

⁷² CPSE wise no. of MSEs benefitted were SAIL-2971, ONGC-2132, NMDC-164, GAIL-118, NHDC-116, NLC-23, CIL-11, BPCL-7, OIL-6 Balmer Lawrie-3 and NALCO-2

⁷³ Indian Trade Classification Harmonised System Code

A test check of records in five CPSEs revealed that they had procured significant quantum of reserved items from non-MSE vendors during 2015-16 and 2016-17:

GAIL had purchased reserved items worth ₹356.51 crore while IOCL had purchased reserved items worth amounting to ₹100.12 crore from non -MSE vendors.

BHEL and NTPC had also purchased reserved items from non-MSE vendors.

It was noticed that NHDC had not customised its ERP system identifying the ITCHS codes of 350 reserved items. In the absence of such specific identification, procurement of reserved items from MSE vendor would depend upon the prerogative of the procurement personnel raising the risk of non-compliance.

In their replies, the CPSEs cited the following reasons for procurement of reserved items from non- MSE vendors:

- MSE vendor database for the required items was not available.
- The list of 358 reserved items was a generic one and as such, items might have to be occasionally procured from vendors other than MSEs due to technical reasons.
- There was no specific requirement to communicate procurement of the listed items from non-MSE vendors to the Review Committee.

Recommendation: Ministry of MSME should make available the list of MSE vendors including MSE owned by SC/ST to the CPSEs and also list of reserve items needs to be more specific for ease of implementation of the policy.

7.5.6 Setting up Grievance Cell

Clause 13 of the Public Procurement Policy Order, 2012 envisages setting up of a Grievance Cell in Ministry of MSME for redressing grievances of MSE in Government Procurement. The function of the Cell was to take up issues related to Government Procurement raised by MSE with Departments or agencies concerned.

Scrutiny of records revealed that the total of 2253 grievances had been received in DC (MSME) during the last five years (250: Internet Grievance Monitoring System (IGMS), 193: Centralised Public Grievance Redress and Monitoring System (CPGRAM) and 1810: letters). However, only three of these grievances were routed through Grievance Cell.

Moreover, the DC (MSME) had not maintained the details of grievances received from Office of Prime Minister of India and by e-mail. In respect of redressal of grievances received through IGMS portal, it was noticed that in cases of complaints which were forwarded to the concerned CPSEs, the action taken by concerned CPSEs on the said complaints could not be ascertained as the same were not uploaded on the portal.

DC (MSME) stated (October 2017) in reply that the complaints which were required to

be dealt by the Grievance Cell were placed before it for taking a decision. All the complaints could not be dealt by Grievance Cell since some of the complaints were routine in nature. The reply is not acceptable as audit observed that some of the grievances that were not routed through the Grievance Cell though serious in nature as can be seen from following examples:

- Bharat Sanchar Nigam Ltd. was allowing contractors who were not registered in appropriate class in MSME (IGMS, Grievance No. CG00001155, 14 September 2016) to participate in tendering process
- Bharat Coking Coal Ltd. had not provided exemption from submission of EMD to MSE bidders. (IGMS, Grievance No. CG00001582, 8 November 2016).
- MSEs registered unit under Women Category were not being allowed to participate in tenders of IOCL. (IGMS, Grievance No. WB00000049, May 2016).

Recommendation: DC (MSME) should maintain information on final outcome of complaints/grievances.

7.5.7 Other Issues

- For effective implementation of Public Procurement Policy 2012, O/o DC (MSME) (April 2012) requested every CPSE to appoint a Nodal Officer for implementation of the policy and redressal of grievances. However, as of March 2017, out of 277 CPSEs approached by DC (MSME) only 155 CPSEs i.e. 56 *per cent* had designated Nodal Officers. DC (MSME) in its reply (October 2017) stated that the CPSEs were being regularly reminded to nominate a suitable Nodal Officer.
- According to clause 8 of the Public Procurement Policy Order, 2012, the CPSEs were required to prepare an Annual Procurement Plan from MSEs and upload the same on their official website. Scrutiny of official websites of the 18 selected CPSEs revealed that, 8 CPSEs (NLC, IOCL, RINL, BHEL, SAIL, ONGC, Balmer Lawrie and CIL) had not uploaded their annual procurement plan from MSEs. Another three CPSEs (NHDC, GAIL and BPCL) had uploaded their annual procurement plan up to 2016-17 while CSL had uploaded their annual procurement plan up to 2013-14 only.
- As per clause 5 of the Public Procurement Policy Order, 2012, every CPSE was required to report goals set with respect to procurement to be met from MSEs and achievement against these goals in their respective Annual Reports. Scrutiny of records revealed that out of 18 selected CPSEs, 5 (NMDC, CSL, CIL, ONGC and Balmer Lawrie) had not reported either the goals set or their achievement in their respective Annual Reports. DC (MSME) in its reply (October 2017) stated that CPSEs were being reminded regularly to follow the provisions of the Policy.

- As part of the follow up on the Public Procurement Policy the DC (MSME) had been corresponding with CPSEs from time to time and requesting them to provide procurement data. However, it was observed that during the first three years i.e. 2012-13 to 2014-15 when the Policy was not mandatory 39 *per cent* to 48 *per cent* of CPSEs responded to DC (MSME). There was no improvement in the response of the CPSEs even after the Policy became mandatory from 2015-16. DC (MSME) in its reply (October 2017) stated that under the Policy, there was no provision to penalise the Non-respondent CPSE.
- As per the data provided by DC (MSME) the total number of CPSEs were 277. This information, is, however, not updated as the number of CPSEs had increased from 277 (as of 31 March 2013) to 320 (as of 31 March 2016). DC (MSME) had, therefore, not approached all the CPSEs for implementing the policy during the last five years, even though it became mandatory w.e.f. 1 April 2015. DC (MSME) in its reply (October 2017) stated that the information in respect of total number of CPSEs had been collected from Department of Public Enterprises. The reply of DC (MSME) is not acceptable as the year wise information regarding total number of CPSE was available on the official website of Department of Public Enterprises in its Annual survey which was easily accessible to DC (MSME).

Recommendation: Ministry of MSME should incorporate suitable provisions to enforce compliance with the Policy by the CPSEs.

7.6 Conclusion

The Public Procurement Policy Order, 2012 aimed to boost procurement from MSEs by CPSEs. Scrutiny of procurement in a sample of 18 CPSEs indicated that there were significant gaps in actual implementation of this Policy. Nine CPSEs were excluding significant quantum of their procurement while reporting compliance with the policy of purchasing specified percentage of goods and services from MSEs. Some of the CPSEs examined in Audit, did not meet the target of 20 *per cent* procurement from MSEs. None of the CPSEs could meet the target of 4 *per cent* procurement from MSEs of SC/ST entrepreneurs. There were significant outstanding payables to MSEs in some CPSEs though it was mandatory to make such payments within 45 days. Items designated for procurement from MSEs were being procured from non MSEs by four CPSEs test checked in Audit. Few Vendor Development Programmes were conducted by some of the CPSEs. Eight CPSEs did not upload their annual procurement plan from MSEs on their websites and five CPSEs did not report on goals and achievement of procurement targets from MSEs in their annual reports. The number of CPSEs targeted by DC (MSME) was incorrect (being dated information) while the grievance redressal cell set up by the Ministry functioned poorly. Lack of provisions in the policy to penalise the non-compliant CPSEs has been highlighted by DC (MSME). Audit noticed that the

downgrading by DPE (through deduction of marks in MOU rating of the CPSEs) has not proved an effective deterrent against non-implementation of the policy.