



Research Paper

Collusions in Public Procurement

Insights into cartels, bid rigging,
frauds and other corrupt
practices.

**REGIONAL TRAINING INSTITUTE,
KOLKATA**
INDIAN AUDIT AND ACCOUNTS DEPARTMENT

“There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the government.”

Benjamin Franklin

Contents

I.	Preface	7
II.	Introduction	9
	Cartels and Bid-rigging	9
	Public procurers.....	10
	Detecting Bid Rigging In Public Procurement	10
	Look for markets that are more susceptible to bid rigging.....	10
	Look for opportunities that the bidders have to communicate with each other.....	10
	Look for indications that the bidders have communicated with each other.....	11
	Look for any relationships among the bidders after the successful bid is announced.	11
	Look for suspicious bidding patterns.	11
	Look for unusual behaviour.....	12
	Look for similarities in the documents submitted by different bidders.	12
	Case Study.....	12
	Learning Points.....	14
	Audit’s Role in similar circumstances	15
III.	Public Procurement: Legal Framework	16
	Rules Governing Central Procurement.....	16
	Rules Governing Procurement by State Governments.....	17
	Monitoring and Vigilance.....	17
	Major Guidelines by the Supreme Court on Procurement.....	18
	Major Guidelines on Procurement Contained in the GFR.....	19
	Preference Policies in Public Procurement.....	21
	Preferential Treatment for the MSME Sector.....	21
	Preferential Treatment for Central Public Enterprises.....	22
	Indigenous versus Foreign Suppliers.....	23
	Weakness in the System.....	24
	Competition Law and associated statutory provisions.	32
	Genesis	33
	Competition Jurisprudence	33
	Bid-rigging under the Competition Act, 2002.....	34

	Bid rigging is anti-competitive	34
	The Public Procurement Bill, 2012	35
	HIGHLIGHTS OF THE BILL	35
	Comparison of laws and regulations regarding public procurement.....	38
	Public procurement Acts and Bills in States:.....	39
	Make In India.....	39
IV.	Forms of bid rigging	41
	Bid Suppression	41
	Complementary Bidding.....	41
	Bid Rotation	42
	Subcontracting.....	42
	Market allocation	42
V.	Risk Assessment.....	43
	Industry, Product and Service Characteristics That Help Support Collusion.....	43
	Small number of companies.....	43
	Little or no entry.....	43
	Market conditions	43
	Industry associations.	43
	Repetitive bidding.....	44
	Identical or simple products or services.....	44
	Few if any substitutes.	44
	Little or no technological change.....	44
	Checklist for Designing the Procurement Process to Reduce Risks of Bid Rigging.....	44
	Be Informed Before Designing the Tender Process.....	44
	Design the Tender Process to Maximise the Potential Participation of Genuinely Competing Bidders	45
	Define Entity's Requirements Clearly and Avoid Predictability.....	46
	Design the Tender Process to Effectively Reduce Communication among Bidders	47
	Carefully Choose Your Criteria for Evaluating and Awarding the Tender	48
	Raise Awareness amongst Staff about the Risks of Bid Rigging In Procurement.....	49

VI.	Checklist for Detecting Bid Rigging In Public Procurement	51
	Look For Warning Signs and Patterns When Businesses Are Submitting Bids	51
	Look For Warning Signs in All Documents Submitted.....	51
	Look For Warning Signs and Patterns Related To Pricing	52
	Look for Suspicious Statements at All Times	53
	Look For Suspicious Behaviour at All Times	53
	A Caution about Indicators of Bid Rigging	53
VII.	Corruption and Bid-Rigging.....	55
	How does a corruption scheme in procurement work?	55
	What are the goals of any procurement-related corruption strategy?	55
	Phases in the procurement cycle where corruption can take place	56
	Procurement Plan.....	56
	Advertisement.....	57
	Bidding Documents.....	58
	Short-Listing and Prequalification.....	60
	Pre-Bid Conference	61
	Bid Submission	62
	Bid Opening	62
	Bid Evaluation Committee	63
	Bid Evaluation Report.....	63
VIII.	Fraudulent bids	65
	What is a fraudulent bid?	65
	What is the purpose of a fraudulent bid?	65
	How are fraudulent bids detected?	65
	Ownership	66
	Financial capacity	66
	Technical capacity	67
	Bid security	68
IX.	Fraudulent Implementation	69
	What is fraudulent implementation?	69
	What is the difference between poor and fraudulent implementation?	69
	Impacts of fraudulent implementation	69

	How is fraudulent implementation detected?.....	70
	Draft Contract.....	70
	Contract Delivery.....	71
	Contract Changes.....	74
X.	Role of Audit in Relation to Cases of Fraud and Corruption: CAG’s Standing Order.....	76
XI.	Case Studies	77
	Acquisition of Helicopters for VVIPs.....	77
	Background.....	77
	Key findings and recommendations.....	77
	Ultra Mega Power Projects under Special Purpose Vehicles.....	78
	Background.....	78
	Findings and Recommendations	79
	Procurement of Stores and Machinery in Ordnance Factories.....	80
	Nalanda Factory.....	80
	Procurement by Factories.....	88
	Contract Management	91
	Internal Control.....	91
	Internal Audit and Vigilance.....	91
	Delegation of financial powers without Internal Audit and Vigilance.....	92
	Tender Purchase Committee exercising functions of Competent Financial Authority	92
XII.	Suggested readings and Bibliography:.....	94
XIII.	Annexure	96
	<i>I Similarity in Documentation submitted</i>	<i>96</i>
	<i>II Evidence of Collusion among different firms.....</i>	<i>97</i>
	<i>II Statement showing the details wherein firms quoted Identical Rates.</i>	<i>102</i>

Preface

Tender system, as the normal method of public procurement, works on the premise of competitive rate quoting, but cartel formation destroys this basic premise. The bidders join together and manipulate the rates and competitiveness is lost. There are various ways in which the manipulations are done: the cartel deciding who shall win the bid and others quote higher; the cartel decides on the quantity distribution among its members and each quote for his allotted quantity; and each quoting for his preferred location only or quoting lowest rate for that location. Cartels may operate with connivance of public servants.

Discussions in this paper centers around understanding the tenets of rigged tendering process whereby the citizens are deprived of their best value for money. We discuss in details the environment and the risk factors that encourage collusions. We briefly discuss the statutory framework and then move on to discuss step by step the process of scrutiny of fraudulent bids and the red flags that will help the auditor exercise his professional skepticism. There is also a checklist to help in identifying cases prone to Bid-rigging.

The objective of this research paper is to help audit teams gain a better perspective of various collusions that are found in public procurement and to provide them with resources for understanding and reporting such collusions.

Although we have taken every care to make this material exhaustive, interested readers may also look into the suggested reading list with this paper. Finally, we implore our readers to suggest ways for improving this material. They may also share with us interesting cases worth reviewing.



Principal Director

Introduction

Vigorous competition among suppliers helps governments to obtain the best value for money for the goods and services they procure. Conversely, when competition is curtailed – for example when suppliers engage in bid rigging – taxpayers’ money is wasted as governments pay more than a fair price.

Bid rigging occurs in all types of industries and circumstances, and in all parts of the world. When bid rigging impacts public procurement, it has the potential to cause great harm to taxpayers. One reason for this is that public procurement is often a large part of a nation’s economy.

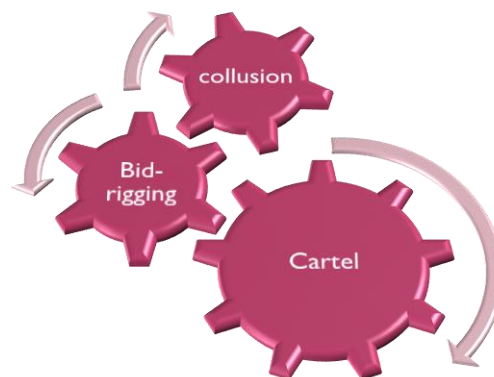
Competition in public procurements are also compromised when public officials choose to forego fair and equitable policies and processes and favor a particular bidder whether for pecuniary considerations or otherwise.

This paper emphasizes primarily on cartels and bid-rigging although other corruptions are also discussed because they are often associated with cartels and bid-rigging.

Cartels and Bid-rigging

Cartels are formed when companies collude with their competitors to increase or maintain prices, divide geographical territories, customers or projects between themselves, agree to limit production, and/or engage in bid rigging. Bid rigging occurs when bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Bid rigging is a form of cartel conduct. Bidders can eliminate competition in public procurement in many simple ways, for example:

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



Although the schemes used by firms to rig bids vary, they all have one thing in common – the bidders agree to eliminate competition so that prices are higher and the government pays more.

Cartels may consist of one or more anti-competitive agreements that direct how the involved parties will act (eg, a minimum price to be charged for a product or service, or no discounting), or in some cases not act (eg, not bidding on a tender). An anti-competitive agreement can be very informal (a ‘nod and a wink’) and still remain illegal. Although there are different types of

cartels, the aim of each is the same – to maximize the profits of cartel members, while maintaining the illusion of competition. When competitors engage in bid rigging (or other cartel conduct), a customer risk being overcharged for purchases. Cartel conduct can damage the welfare of citizens generally by raising prices, and also by negatively affecting other factors such as choice, innovation, quality and investment.

Public procurers

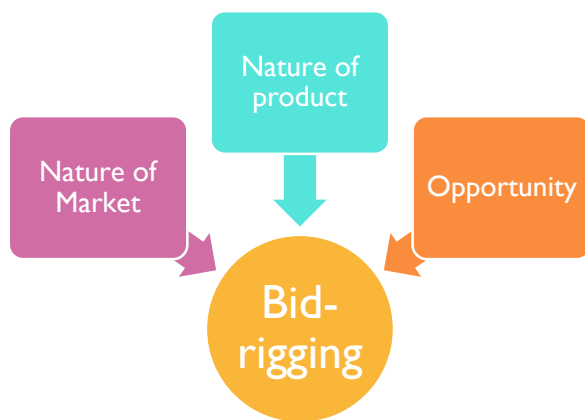
Government is a significant purchaser of goods and services. Public Procurement in India constitutes 30% of the GDP. To ensure transparency and accountability for this expenditure, the Government has established a general procurement policy based on the principles of best value for money over whole of life, and open and effective competition. Rules for substantial procurement by government departments require an open, competitive bidding process (tendering) as the norm. However, such a process will only work well when competitors act and price independently and honestly.

Detecting Bid Rigging In Public Procurement

While detecting bid-rigging is impossible in all cases, there are certain aspects that could be looked into for signs of possible bid-rigging and cartel formation:

Look for markets that are more susceptible to bid rigging.

The presence of certain factors increases the need for vigilance.



Small number of bidders - The probability of bid rigging is higher if there are few bidders. Bid rigging requires bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same bidders are involved in repeated procurements.

Standardized or simple products - The chances of bid rigging are greater if the products or services being purchased are standardized

and simple, and do not change over time. Under these circumstances, it is easier to work out an agreement and have it last a long time.

Little or no entry - If entry in a certain bidding market is costly, hard or time consuming, firms in that market are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid-rigging efforts.

Look for opportunities that the bidders have to communicate with each other.

Bidders need to know and communicate with each other to reach an agreement. Once bidders know each other well enough to discuss bid rigging, they need a convenient location where they can talk. Of course, communications can occur by telephone, email, fax or letter, and they often do; however, many bid-riggers believe that they are less likely to leave evidence of their

communications if they have face-to-face meetings. These meetings occur most often at, or in association with, trade association meetings, or other professional or social events. They are also likely to occur prior to the opening of the tender process.

Look for indications that the bidders have communicated with each other.

Bid rigging requires actual and often repeated communications between the bidders. Procurement officials may hear or come across statements indicating that information may have been shared, such as a bidder having knowledge of another bidder's pricing, or not expecting to be the low bidder, or perhaps when a bidder refers to "industry" or "standard" practices or prices.

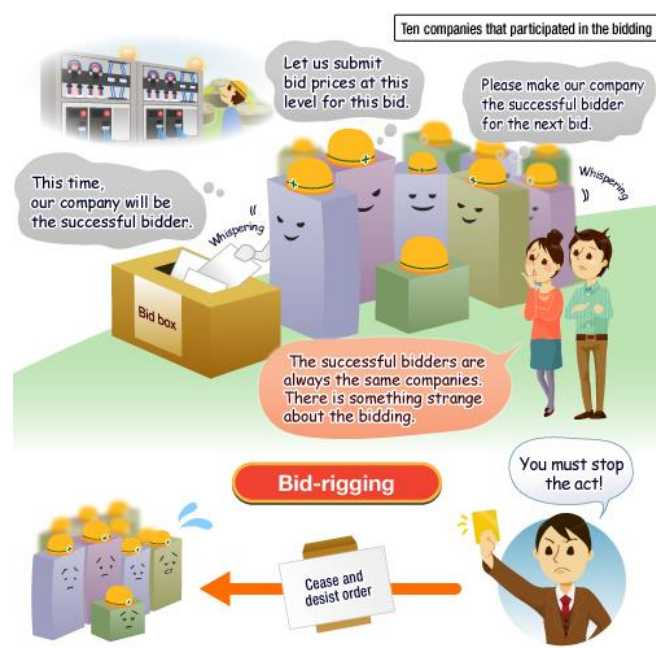
Sometimes procurement agents can infer that bidders are communicating. For example, if one bidder picks up or submits bidding material for another firm, then some communication must have taken place between them. In other instances, a bidder may say something that indicates that certain non-public information, or an answer to a question, was learned through talking to another bidder.

Look for any relationships among the bidders after the successful bid is announced.

In some cases, bidders may attempt to split the extra profit that is earned through bid rigging. This is especially true if one large contract is involved. Sometimes the winning firm may pay the other bidders directly; however, the 'profit split' can also be passed on through lucrative sub-contracts to do some of the work or to supply inputs to the project. Joint bids can also be used as a way to split profits.

Look for suspicious bidding patterns.

Bidders may have devised a scheme that reveals itself as a pattern over the course of many bids. For example, there may be a pattern to the winner (A, B, C, A, B, C), or it may be that the same bidder always wins bids of a certain type or size, or that some bidders only bid in particular geographic areas. Perhaps a bidder never wins but keeps bidding; or a bidder wins whenever it bids, even if it bids rarely. A bidder may show a pattern of submitting relatively high bids for some tender offers and relatively low bids for other, similar tender offers.



Pricing may be unusual. All bids may be unexpectedly high, or discounts or rebates may be unexpectedly small. Bids may also be different from previous, similar procurements, but the differences are unrelated to any change in the underlying economic

conditions. Bid levels may change when a new bidder (i.e. one who has not bid in the past) submits a bid. Pricing may not make sense when you consider transportation costs to different locations.

Look for unusual behaviour.

You would expect the winning bidder to accept the contract, so it could be considered 'unusual', for example, if the winner chose not to accept it, or withdrew before the award was made. Submitting a bid without normal detail or required documentation, or without the necessary information from suppliers, may also constitute unusual behaviour, as does a situation where the number of bidders is unexpectedly small, with some normal bidders not participating.

Look for similarities in the documents submitted by different bidders.

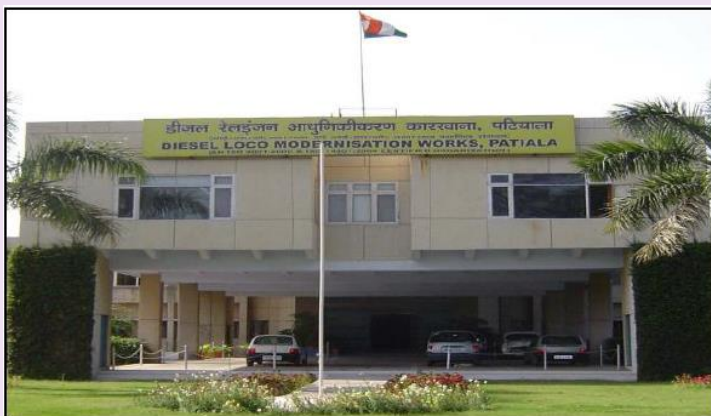
Bid-riggers sometimes have a single person prepare all the bids. Alternatively, a number of people may work on the bids, but they may work closely with each other. If you put the bid documents side-by-side, you may notice the same type of paper, the same postmarks, the same misspellings, the same handwriting, the same wording, the same alterations or changes, the same miscalculations or the same amounts. Eventually, most bid-riggers become careless and make mistakes. (See Annexure I)

Case Study

Cartelization in the matter of supply of spares to Diesel Loco Modernization Works, Indian Railways, Patiala, Punjab.

(Adopted from: Competition Commission of India (CCI) suo moto case no. 03 of 2012).

Diesel Loco Modernization Works (DLMW) is a unit of Indian Railways at Patiala, Punjab. It undertakes repair and maintenance of diesel locomotives. For this purpose, it regularly procures parts for the locomotives by floating tenders in which vendors approved by Research



Designs & Standards Organization (RDSO) of the Indian Railways can bid. The present case relates to Tender No. 201320510 which was floated by DLMW for procurement of feed valves used in diesel locomotives. The tender was opened on 27.04.2012. The Tender Committee evaluated the offers received from the opposite parties herein who were the only

bidders in the instant tender. It was noticed by the Committee that all the three RDSO approved vendors who are the opposite parties herein quoted an identical rates of Rs. 17,147.54 for the feed valves per piece. This rate was further found to be 33% higher than the last purchase rates.

The price-bids were as follows:

Sl no.	Particulars	M/s Escorts Ltd, Faridabad	M/s Faiveley Transport India Ltd, Hosur	M/s Stone India Limited, Kolkata
a.	Basic Price	17,147.54	14,534.52	14,674.28
b.	Add Excise	Inclusive @ 12%	@ 12% i.e. Rs. 1744.1424	@12% i.e. Rs. 1760.9136
c.	Add Cess on ED	Inclusive @3% on ED of 12%	@3% on ED i.e. Rs. 52.3243	@3% on ED i.e. Rs. 52.8274
d.	Sub Total	17,147.54	16,330.9867	16,488.02
e.	Add CST	Inclusive @5.25%	@5% i.e. Rs. 816.5493	@4% i.e. Rs. 659.52
f.	Total unit price in Rs.	17,147.54	17,147.54	17,147.54

From the above, it is indisputable that the total unit price quoted by all the opposite parties was Rs. 17,147.54/-.

The Tender Committee during evaluation and consideration of the bids suspected cartel. However, as per General Conditions of Contract for Stores Department it is provided that wherever all or most of the approved firms quote equal rates and cartel formation is suspected, railways reserves the right to place order on one or more firms with exclusion of the rest without assigning any reasons thereof. Accordingly, after considering the implications of e-tendering, the Committee decided to enter into negotiations with SIL. Consequent upon negotiations, SIL reduced its basic price and offered discount of Rs. 554.15/- each on basic price i.e. it offered revised basic rate of Rs 14,120.13/- each +ED+ CST as per its offer. At this stage, it may be observed that though the offer of EL was found technically suitable, its offer was passed over as it did not submit the cost of tender documents. Similarly, the offer of FTRTIL was found technically suitable, yet its offer was passed over as the firm did not accept the warranty clause as per IRS conditions of the contract.

The other aspect which further strengthens the finding of collusion is the examination of the cost of production of the valves vis-à-vis the bid price. In this connection, the DG (CCI) called for the cost audit report/ cost production data from the parties. From the information submitted, it was noticed by the DG (CCI) that EL's cost of each feed valves was Rs. XXX/- whereas it has quoted the basic price of Rs. 14,500/- in the present tender. In the case of FTRTIL, it was found that it had a cost of each feed valve of Rs. XXX/- against which it quoted the basic price of Rs. 14,534.52/- for the tender in question. Similarly, SIL's cost of each feed valve was Rs. XXX/- but it quoted the basic rate of Rs. 14,674.28/-. In these circumstances, when all the opposite parties have their manufacturing unit located at different places i.e. Haryana, West Bengal and Tamil Nadu with different cost of production, it was not possible to supply the feed valves at identical unit price of Rs. 17,147.54/-. Further, no justification or explanation was provided by the parties in this regard.

The DG (CCI) also examined the past conduct of these bidders with respect to the tenders invited by other railway zones. From the information so gathered, it was observed that though

the production cost of the feed valves of the opposite parties were different but they quoted nearly identical price in the past in different zones of railway and in some cases there was difference of bid price of merely 88 paisa and/ or Rs. 9.14 paisa as in the case of Tender No. 26111569 dated 11.10.2011 where EL and FTRTIL quoted identical price for supply of 54 feed valves @ Rs. 14,535.40/- and Rs. 14,534.52/- respectively. Similarly, in Tender No. 43110361A dated 17.10.2011 EL and FTRTIL have quoted Rs. 14,525.38 and Rs. 14,534.52 respectively to Southern Railway. As such, the action of the opposite parties in bidding nearly identical amount in the tender was found to establish that the three bidders have resorted to collusive biddings for supply of feed valves to the railways in the past. Thus, taking into consideration the past conduct of the three bidders, it is further established that the opposite parties were used to such practice of sharing the price data and had accordingly also resorted to similar practice of collusive bidding in the e-tender in the present case as well.

The CCI finally went on to penalize M/s Escorts Ltd, Faridabad, M/s Faiveley Transport India Ltd, Hosur and M/s Stone India Limited, Kolkata by Rs. 1.91 crore, Rs. 5.71 crore and Rs. 57.70 crore.

Learning Points

If we look into the above case, it had all the telltale signs which would indicate cartel formation and bid-rigging. There were Small number of bidders, Standardized or simple products and strong entry barrier. They were the vendors that were pre-approved by RDSO. CCI noted that proof for actual meetings, co-operation between bidders and price rigging were always indirect because of its clandestine nature. However, the pricing behaviors indirectly substantiate those facts. It may be noted that EL quoted an all-inclusive quote of Rs. 17,147.54/- per unit whereas the other parties viz. FTRTIL and SIL quoted basic prices of Rs. 14,532.52/- and Rs. 14,674.28/- respectively to reach a total unit price of Rs. 17,147.54/- which is identical to the all-inclusive quote of Rs. 17,147.54/- made by EL. It may be observed that though FTRTIL and SIL quoted different basic prices yet the total unit price reached by them was identical with each other as also with the quote made by EL. As the central levies i.e. Excise Duty and CST are to operate at a uniform rate, this mathematical feat was achieved by the parties notwithstanding different quoted basic prices by working backwards to reach identical quotes towards total unit price by using different CST rates. Additionally, the basic pricing did not have any relation to the cost data.

Also, it seems that the bidders never made any attempt to rectify the mistakes of their bids. Two of the three bidders tweaked their bids in such fashion that only one valid bidder remained in the game. In fact, one of the common strategy for cartels is that Complementary/ cover bids are filed by some of the bidders in response to a tender inquiry to provide comfort to the procuring authorities that there are various bids in response to the tender inquiry to avoid any question being raised on the absence of competition in the tender process. Such entities do not participate in the bid process to actually compete with the successful bidder but submit “complementary” or “cover” or “courtesy” bids only so that the procurement process does not get stalled due to lack of enough competition. Complementary bidding is done when some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer. Such bids are not intended to secure the acceptance of a procurer, but

are merely designed to give the appearance of genuine competitive bidding. Complementary bids tend to defraud procuring entities by creating a camouflage of genuine competition to conceal the inflated bid prices. The present is such text-book case, where EL and FTRTIL submitted complementary bids in response to the tender inquiry under consideration as they were not, as a matter of fact, competing with SIL in the procurement process.

Audit's Role in similar circumstances

Examination of the above case will show that most of the findings made by CCI could also have been made by Audit. Scrutiny of tenders would have revealed most of the fact. The cost audit report could have been obtained by emphasizing its need with the Management (sometimes as part of tenders, the management deserved the right to call for cost audit reports). However, Audit must be cautious as to not draw the conclusion that cartel and bid-rigging have indeed happened. Audit may point out the possibility of such cartel/bid-rigging and perhaps recommend that the matter be reported to the CCI.

Public Procurement: Legal Framework

Please note that this section is not the authoritative source of the statutes. For authoritative source, please refer to the relevant laws, rules, case laws, government orders etc. as applicable.

At the apex of the legal framework governing public procurement is Article 299 of the Constitution, which stipulates that contracts legally binding on the government have to be executed in writing by officers specifically authorised to do so. Further, the Central and state governments of India derive their authority to contract for goods and services from Article 298 of the Constitution of India. But, except for a requirement on the government to protect the fundamental rights of citizens of being treated equally (while soliciting tenders), the Constitution does not provide any further guidance on public procurement policies, principles or procedures.

The Indian Contract Act, 1872 and Sale of Goods Act, 1930, the Central Vigilance Act, 2003, the Prevention of Corruption Act 1988, the Right to Information Act, 2005 and, where competition issues are involved, the Competition Act, 2002 are other major legislations governing the contract and sale of goods in general, including goods and to some extent services procured by the government.

However, there is no law exclusively governing government procurement at national level in India, and neither has any authority been established that is exclusively responsible for defining procurement policies and for overseeing compliance with the established procedures.

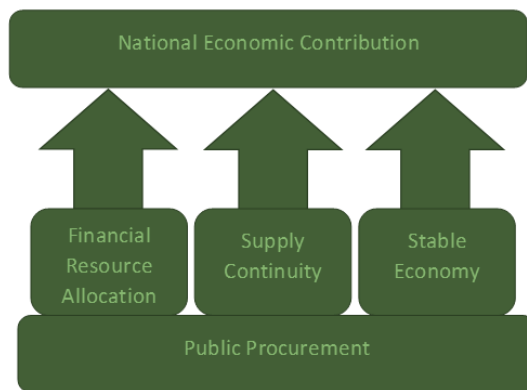
However, specific legislations on the subject in certain states such as Tamil Nadu and Karnataka exists.

Rules Governing Central Procurement

In the absence of a central legislation, comprehensive rules and directives cover the subject of Government Procurement. These include the General Financial Rules (GFR), 2005, the Delegation of Financial Powers Rules (DFPR) and government orders regarding price or purchase preference or other facilities to sellers in the handloom sector, cottage and small scale industries and to Central PSUs etc., and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.

The GFRs are a compendium of general provisions to be followed by all offices of Government of India while dealing with matters of a financial nature.” These rules were first issued by the Department of Expenditure, Ministry of Finance in 1947 and underwent an overall review in 1963. Between 1963 and 2005 various amendments were made to the 1963 rules. During this period, the validity of various policies and interpretations of various provisions also came into question before the courts. Decisions by courts, especially those by the Supreme Court, also came to guide the procurement processes in India. These decisions and subsequent amendments were incorporated into the new GFR 2005.

The GFRs 2005 provide guidelines or criteria to which the procedures adopted by the procuring agencies must conform. Ministries or departments (procuring agencies) that procure are free to set out their own procedures and the only requirement is that such procedures should conform to the GFRs. Chapter 6 of GFR, 2005 deals with procurement of goods and services. Rules 135-162 deal with the procurement of goods while Rules 163-185 deal with the procurement and outsourcing of services.



Before the liberalisation of the Indian economy, most procurement operations were centralised and all ministries and departments (except few which had substantial procurement operations) were required to obtain supplies through the DGS&D. Now, however, all ministries are authorised to procure goods for their use. The role of DGS&D is now limited to procuring items of common use by a number of ministries (Rule. 140 GFR, 2005).

DGS&D identifies and maintains various lists of suppliers and consultants and finalises the rate and running contracts for items of common use. For these purposes, certain guidelines have also been issued by DGS&D, which also form part of the legal framework for procurements in India.

Rules Governing Procurement by State Governments

A major amount of public procurement is done by various State Government Departments. Most of the States have a system similar to the Central Government. The procurement is generally governed by State Financial Rules/Codes, issued by the Finance Department of each State as orders. However, three States Rajasthan, Tamil Nadu and Karnataka have come out with specific legislations on public procurement and Himachal and Kerala are in the process of drafting bills on the subject. These legislations contain virtually the same procurement procedures as prescribed in the GFR. But by virtue of being enactments, they give certainty and stability to procedures, legal recourse of appeal to courts to aggrieved parties (whereas for contesting financial rules, the writ jurisdiction of the high courts have to be invoked) and the procurement enactments cover not merely government departments but public undertakings, local bodies, societies and universities, if so provided.

Monitoring and Vigilance

The two major bodies overseeing the probity of the procurement process are the institution of the Comptroller and Auditor General (CAG) of India and the CVC. The CAG, appointed under Article 148 to 151 of the Constitution of India audits the Appropriation and Financial Accounts of the Centre and the States. It undertakes financial audits to verify if the financial statements of the government are in line with prescribed norms. Compliance audit is undertaken to ascertain whether the transactions relating to expenditure, receipts, assets and liabilities of the Government are carried out in compliance with prescribed provisions in the Constitution, laws

concerned, rules and regulations. The CAG performance audit is an evaluation of government organisations, programmes, and schemes with regard to economic, efficiency and effectiveness.

The CAG is an independent statutory body and its audit reports and recommendations are presented before the Parliament and respective State Legislatures. The Public Accounts Committee of Parliament reviews the audit reports and makes recommendations to the Parliament, which, in turn, are to be acted upon by the government. Virtually the same procedure is followed in case of the States. However, the action taken on recommendations of Parliament/Legislature, based on the CAG reports normally follow after a consideration time lag, thereby rendering virtually ineffective any critiques by the CAG.

The CVC mainly focuses on the integrity of public servants in carrying out procurement functions. It conducts investigations under the Prevention of Corruption Act 1988 and recommends action to the government against erring officials. The CVC also issues guidelines on procurement matters, but these are advisory in nature and not legally binding on government departments.

The CCI, under the Competition Act, 2002 also monitors and prohibits anticompetitive behaviour on the part of bidders, such as bid rigging and cartelisation. Bid rigging or collusive bidding may be inquired into by the Commission and is banned under sub-section 3 of Section 3 of the Act. The Commission can impose substantial penalties on firms indulging in bid rigging or collusive bidding. In case the bid rigging or collusive bidding has been entered into by a cartel, the penalty imposed is even more severe.

Major Guidelines by the Supreme Court on Procurement

In the absence of an overarching legislation on procurement, the courts in India have often filled up the lacuna by laying down some basic principles of public procurement emanating from the fundamental rights enshrined in the Constitution and generally requiring that procurement practices are undertaken in a fair manner and are in compliance with principles pertaining to transparency. Some of the important principles laid down by the Supreme Court and High Courts are as follows:

- i. The government must act in conformity with some standard or principle which meets the tests of reasonableness and non-discrimination in awarding contracts. This follows as a necessary corollary from the principle of equality enshrined in Article 14 of the Constitution- as held by the Supreme Court in **R.D. Shetty v. International Airport Authority**.
- ii. The Supreme Court in **State of UP v. Raj Narayan & Ors** held that government organisations are as a rule prohibited from working in secrecy in dealing with contracts, barring rare exceptions.
- iii. The Supreme Court in **G.B. Mahajan v. Jalgaon Municipal Corporation** noted that the reasons for administrative decisions must be recorded and based on facts or opinions of experts.
- iv. Adequate publicity of procurement is essential as held by the Supreme Court in **Committee of Management of Pachaiyappas Trust v. Official Trustee of Madras**.

v. Officers engaged in public procurement have to perform a fiduciary duty. This was held in **Delhi Science Forum v. UOI**.

vi. Procurement actions have to be fair as held by the Supreme Court in **Mahesh Chandra, v. Regional Manager, U.P. Financial Corporation**.

vii. Bid evaluation has to be in accordance with the bid evaluation criteria communicated while inviting the bid. This was held by the Supreme Court in **M/s Prestress India Corporation v. U.P. State Electricity Board**.

viii. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder. **Order dated April, 2012, passed by Hon'ble High Court Of Delhi in WP(C) NO. 2092/2012: M/S. Amit Brothers vs Chief Engineer R&D and Another.**

Major Guidelines on Procurement Contained in the GFR

The procedure for government procurement under the GFR Rules, envisages open tendering, effective advertisement, nondiscriminatory tender conditions and technical specifications, public tender opening (bid evaluations based on a pre-disclosed criteria and methodology) and award to the most advantageous bidder without any negotiation on price or any other terms subject to certain specified exceptions. Some of the important rules of the GFR are Rule 137, Rule 160 and Rule 161.

Rule 137 lays down the basic objective for procurement activity, which is to bring efficiency, economic and transparency; fair and equitable treatment of suppliers; and promotion of competition in public procurement. To this effect, the Rule lays down detailed procedures, such as clarity in specification of quality and quantity of goods to be procured while giving specifications in the tender; inviting of offers through a fair and transparent procedure; and, recording the considerations taken into account for making the procurement decision.

In order to keep the Indian trading community informed about the latest business opportunities in India and abroad, the Directorate General of Commercial Intelligence & Statistics (D.G.C.I. & S.) brings out the Indian Trade Journal, a weekly publication. It is brought out every Wednesday. This unique govt. of India publication is the only official journal for publication of tenders of all government of India organisations. The Journal is being published since 1906.
http://www.dgciskol.nic.in/indian_trade_journal.asp

The conditions for eliminating arbitrariness in the procurement process in the GFR are as follows: The bidding document should contain the criteria for eligibility and qualification to be met by the bidders, such as past performance, technical capability etc; eligibility criteria for goods; the procedure, date, time and place for sending bids; date, time and place of opening the bid; terms of delivery; it should provide a mechanism to enable a bidder to question the bidding process; it should contain provisions for settlement of dispute, if any, resulting from the contract to be kept in the bidding

document; the specifications in the bid documents should be broad based to the extent possible and use standard specifications which are widely known to the industry; evaluation of bids should

be made in terms of the conditions already incorporated in the bidding documents; bidders to be prohibited from altering or modifying their bids after the expiry of the date for receipt of bids; negotiation with the bidders is discouraged; Finally, the contract must be awarded to the lowest evaluated bidder whose bid has been found to be responsive and who is eligible to perform the contract.

Depending upon the value of the goods, the GFR provides for specific tendering norms which have been noted herein:

1) **Purchase without quotation:** These can be authorised up to the value of Rs 15,000 on each occasion.

2) **Purchase by Purchase Committee:** Purchases between Rs 15,000 to Rs 100,000 may be authorised on the recommendation of a local Purchase Committee. The Purchase Committee will survey the market, ascertain the reasonableness of rate, quality, and specifications while identifying the appropriate supplier.

3) **Purchase through tender:** For purchase of goods above Rs 1,00,000 GFR prescribes procurement through bids.

a) Open Tender- For procurement of goods of Rs 25,00,000 and above, invitation to tenders by advertisement is required. The advertisement should be published in Indian Trade Journal and at least one national daily having wide circulation, as also in the website of the department. The time for submission of bids should be three weeks from publication of tender notice/availability of bidding document and four weeks where bids are to be obtained from abroad.

b) Limited tender: For procurement of goods below Rs 25,00,000/-, limited tender mode, i.e. sending copies of the bid documents to at least three registered suppliers, can be adopted.

c) Single tender: Procurement from a single source may be adopted only under few select circumstances, namely:

- (i) It is in the knowledge of the user department that only a particular manufacturer is manufacturing the required goods.
- (ii) In case of emergency, the required goods are to be purchased necessarily from a particular source and the reason for such a decision is to be recorded and approved by the competent authority.
- (iii) For standardisation of machinery or spare parts, which has to be compatible with the existing equipment, the required item, with the advice of a technical expert and on approval by the competent authority, may be purchased only from a select firm.

4) **Procurement of goods financed by Loans/Grants extended by International Agencies:** The Articles of Agreement with the International Agencies, like the World Bank, Asian Development Bank etc., stipulate specific procurement procedure to be followed by the

borrowers. The procurement procedures, as finalised and incorporated in the Agreement after consideration and approval of the Ministry of Finance are to be followed accordingly.

5) **Two bid systems:** For purchasing capital equipment, high value plant, machinery etc., of complex and technical nature, the tenderers should be asked to bifurcate their quotations in two parts. The first part, the 'Technical Bid', should contain the relevant technical specifications and allied commercial details as required in terms of Tender Inquiry Document. The second part, the 'Financial Bid' should contain only the price quotation. The technical bids are to be opened in the first instance and scrutinised and evaluated by the competent authority with reference to parameters prescribed in the tender documents. Thereafter in the second stage, the financial bids of only the technically acceptable offers to be opened for further evaluation, scrutiny, ranking and placement of contract.

These basic principles of GFR have to be broadly adhered to by departments, ministries and central PSUs in their respective procurement procedures.

Preference Policies in Public Procurement

Preferential Treatment for the MSME Sector

The Micro, Small and Medium Enterprises (MSME) sector contributes significantly to manufacturing output, employment and exports of India. It is estimated that in terms of value, the sector accounts for about 45 percent of the manufacturing output and 40 percent of total exports



of the country. The sector is estimated to employ about 69 million persons in over 26 million units throughout the country. Over 6000 products ranging from traditional to high-tech items, are being manufactured by MSMEs in the country. The MSME sector provides maximum opportunities for both self-employment and generates employment opportunities for those outside the agriculture sector – the inclusiveness of the sector is underlined by the fact that

nearly 50 percent of the MSMEs are owned by disadvantaged groups of society. However, Micro & Small Enterprises (MSEs), which form an overwhelming number of this sector, are highly susceptible to volatile market conditions in the overall production/value chains.

To address these inherent problems, India, like many other countries, put in place public procurement policies to support MSEs and to ensure a fair share of market to such entities.

Under the existing dispensation in India, the government guidelines provide for support in marketing of MSE products through a variety of measures such as price preference, reservation of products for exclusive purchase from MSEs, issue of tender-sets free of cost, exemption from payment of earnest money, etc.

In practice, however, most of these facilities are not being provided to the MSEs by the government departments and Public Sector Enterprises owing to the operation of entry barriers. Some of the government departments and PSUs impose mandatory eligibility clauses providing for a minimum turnover limit and the amount of purchase orders executed earlier for procurement of material floated by them. Most MSEs find it difficult to meet these criteria. The Federation of Indian Small Enterprises (FISME) has stated that presently, annual procurement by Central Government accounts for only 5 percent of total government procurement.

Criteria for MSME vide S.O. 1642(E) dtd.29-09-2006	
Manufacturing Sector	
Enterprises	Investment in plant & machinery
Micro Enterprises	Does not exceed twenty five lakh rupees
Small Enterprises	More than twenty five lakh rupees but does not exceed five crore rupees
Medium Enterprises	More than five crore rupees but does not exceed ten crore rupees
Service Sector	
Enterprises	Investment in equipments
Micro Enterprises	Does not exceed ten lakh rupees:
Small Enterprises	More than ten lakh rupees but does not exceed two crore rupees
Medium Enterprises	More than two crore rupees but does not exceed five crore rupees

In order to address this situation, the government, on November 01, 2011 approved a revised Public Procurement Policy for goods produced and services rendered by MSEs to the Central ministries/departments/PSUs to be notified under Section 11 of the

Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. The notification, made on March 23, 2012, has altered the very parameters of public procurement in India. The recommendations of the report of Prime Minister's Task Force on the MSMEs, 2010 has been taken into consideration to amend the public procurement policy of the Central government.

Commencing from April 01, 2012, every Central Ministry/ PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year, with the objective of achieving an overall procurement goal of minimum 20 percent of the total annual purchases of the products or services produced or rendered by MSEs from the latter in a period of three years. Out of 20 percent target of annual procurement from MSEs, a sub-target of four percent (i.e. 20 out of 20 percent) will be earmarked for procurement from MSEs owned by Scheduled Caste/Scheduled Tribe entrepreneurs, who are the most disadvantaged sections of the population. At the end of three years, the overall procurement goal of minimum 20 percent will be made mandatory. The participating MSEs in a tender quoting price within the band of $L_1 + 15$ percent may also be allowed to supply a portion of the requirement by bringing down their prices to the L_1 price, in a situation where L_1 price is from someone other than an MSE. Such MSEs may be allowed to supply up to 20 percent of the total tendered value. In case of more than one such MSE, the supply will be shared equally. The Central ministries/PSUs will continue to procure 358 items from MSEs, which have been reserved for exclusive purchase from them.

Preferential Treatment for Central Public Enterprises

The Industrial Policy of 1956 led to a large growth in the public sectors in India. The procurement policy of the government mandated both Central government departments and public sector enterprises to apply price and purchase preference in favour of the public sector. The preference for CPEs also applies to construction and service enterprises. With the onset of liberalisation in 1991, the list of industries reserved for the public sector has been reduced. However, as per the

The Public Procurement Bill, 2012

Highlights of the Bill

- ✓ *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 penalises 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.*
-

extant government policy, a Central Public Sector Undertaking (CPSU) gets purchase preference up to 10 percent over Large Scale Private Units (vide Department of Public Enterprises O.M. No. DPE. 13(12)/2003-Fin.Vol.II dated July 18, 2005). Under this system, a CPE whose offer is within 10 percent of that of a large private sector unit is allowed to revise its price downward and would be considered for a parallel rate contract.

However, subsequently pursuant to the judgement of the Supreme Court of India in the matter of M/s Caterpillar India Pvt. Ltd. v/s Western Coalfields Limited and Ors dated 18.5.2007 Government (DPE OM No. DPE/13(15)/2007-Fin dated 21st November 2007) with drew preferential purchase policy but reiterated that the preferential purchase policies framed for the specific sectors by the concerned Ministries/ Departments within relevant Act of Parliament or otherwise do not come within the purview of this decision. The concerned Ministry/Department may independently evolve/review preferential policies for the sectors of their concern, as per their requirement.

The preferential purchase policy for certain medicines remains. Government has approved (vide Department of Chemicals & Petrochemicals OM No. 50013/1/2006-SO(PIIV) dated August 07, 2006) grant of purchase preference exclusively to Pharma CPSEs and their subsidiaries in respect of 102 specified medicines manufactured by them.

Indigenous versus Foreign Suppliers

The Indian government, responding to the WTO's questionnaire on government procurement services, has stated that domestic bidders are treated on par with foreign bidders and the ultimate price available to the user department is the determining criteria (vide WTO Document No. S/WPGR/W/11/ADD.14 dated January 17, 1997, as cited in 'India's Accession to the GPA: Identifying Costs and Benefits', NCAER Working Paper No. 74, 2001). there is no marked preference for indigenous over foreign in procurement by these departments, except for the declared policy of preference for the public sector as discussed above in

case of government departments who have their own PSEs and the preference for the MSME Sector.

Despite India not being a Member of the WTO GPA, except for the sectoral preferences discussed above, the field is largely open for foreign suppliers on par with their Indian counterparts.

Manual on Policies and Procedures for Purchase of Goods, August 2006 also provides that where the Ministry/ Department feels that the goods of the required quality, specifications etc., may not be available in the country and /or it is also necessary to look for suitable competitive offers from abroad, the Ministry/ Department may send copies of the tender notice to Indian Embassies abroad as well as to the Foreign Embassies in India requesting them to give wide publicity of the requirement in those countries. In fact, in certain sectors, it is understood that imported items, e.g. in the case of Information Technology, comprising of electronics and telecommunications hardware, have flooded the market.

In the face of such a situation, and mainly in view of security considerations, the procurement policy in Information Technology and Electronics may undergo change through the government decision of February 02, 2012, whereby preference is to be given to domestically-produced electronic goods where there are security implications and in procurement by the department for its own use.

Weakness in the System

Though procurement is a system-wide activity in government, the institutional framework is in many respects incomplete and weak so that it fails to act as a sufficient safeguard to provide transparency, accountability, efficiency, competition, professionalism and, most importantly, economy to the government. The public perception about the quality, credibility and integrity in the processes of public procurement came to a new low in 2011, with the unveiling of several high level scams, including procurement for the Common Wealth Games 2011 held in Delhi.

The lacunae in the procurement system has also featured repeatedly in a number of reports of the CAG of India, the CVC, Reports of International Institutions, expert committees and academic bodies, including the World Bank, the Report of the Committee on Public Procurement, set up by Government of India, which submitted its Report in June, 2011 etc. Based on these, the major lacunae which emerging in the system are as follows:

A. Systemic Problems across the Public Procurement Regime

- i. The absence of a Public Procurement Law makes the ministries and departments of the Government of India prone to treat the GFR as mere guidelines which can be overridden in the name of public interest. Each department freely devises its own variation of procurement manuals, procedures and practices. Even the GFR 2005 contains 293 rules 16 appendices and a number of forms for different purposes. The Ministry of Finance has also issued 'Manual on Policy and Procedures on Purchase of Goods'. To counter corruption in public procurement the CVC, India's apex anti-corruption agency, has issued numerous guidelines and instructions on model procurement practices in the form of circulars.

Departments and ministries, like the Indian Railways, Defence, the Ministry of Health and Family Welfare (MoHFW), the Central Public Works Department (CPWD) have also issued their own manuals of rules and guidelines. The jungle of procedures and practices confuses honest officials and gives leeway to others for the use of 'discretion'. While dealing with government procurement, the GFR, only regulates the conduct of government businesses and does not vest any rights in the public. The absence of a credible process for grievance redressal and any legal penalty to prevent officials of the procuring department from committing malafide actions is an area of concern. In the absence of a dedicated law, procuring officials tend to ignore the procedures laid down in the GFR, resorting to the excuse of vague guidelines and citing principles pertaining to expediency and public interest without fear of being prosecuted. Further, recent cases of corruption in India, for example in the procurement of goods and services for the Common Wealth Games held in New Delhi in 2011, have illustrated that there is often political interference in the bidding process of large contracts, probably because of absence of a proper legal framework/ monitoring and scrutiny at the time of tendering and contracting.

Codified procurement law governs public procurement in the US, the EU, Canada, South Korea and even China, Afghanistan, Bangladesh, and Nepal. The last three countries have based their laws on the pattern of the UNCITRAL Model Law on Public Procurement. The WTO's Model Law in its GPA is also well regarded as holding aloft the principles of transparency, competition and non-discrimination between domestic and foreign players.

The Government of India, at the highest level, started considering measures for tackling corruption in all types of national activities in 2011 in the wake of several high profile scams. While presenting the Union Budget for 2011-12, the Finance Minister announced the formation

The Public Procurement Bill, 2012

Key Issues and Analysis

- ❖ *The Bill exempts certain procurements from the specified process, besides allowing the government to limit competition in certain cases.*
- ❖ *The Bill specifies Open Competitive Bidding as the preferred method of procurement, without defining the term. The UN Model Law and an earlier draft procurement Bill describe equivalent terms in detail.*
- ❖ *In cases where procurement from a particular supplier is necessary to ensure standardisation or compatibility with existing systems, the Bill does not require certification from a competent technical expert. Such a certification is required by existing regulations and model laws.*
- ❖ *In a departure from existing regulations, the Bill does not restrict use of cost-plus contracts, which provide no incentive for efficiency*

of a Group of Ministers (GoM) to consider measures to tackle corruption. *Inter alia* the GoM, headed by the then Finance Minister, decided to set up a Committee to look into various issues that impact Public Procurement Policy, standards and procedures. The Committee was set up under the Chairmanship of Vinod Dhall, formerly head of India's Competition Commission, had as its member's senior level representatives from each concerned department of the Government of India and the Planning Commission. The Report of the Committee, submitted for government's consideration in June, 2011, has *inter alia* recommended the introduction of an overarching public procurement law, setting up of an institutional framework in the shape of dedicated department within the Ministry of Finance to act as a repository of the law, rules and policy on public procurement and monitor compliance with the same.

Absence of Standard Contracts and Tender Documents:

- ii. Absence of a single Central/State Legislation to govern public procurement gives the opportunity to procuring departments to adjust guidelines to benefit few firms. The World Bank India Procurement Report, 2003, estimates that more than 150 different contract formats are being used by the public sector. The same report has pointed out the multiplicity of tender documents used by different procuring departments and even that for similar works, different agencies issue different tender document, in terms of prequalification criteria, process of selection, financial terms and conditions etc. The absence of standard documents and contracts presents scope for manipulation and favouritism.

Public Access to Tender Documents:

- iii. Absence of publicity of tender inquiries often prevents wide participation of vendors, both domestic and foreign and the consequent lack of competition, thereby hampering the government from obtaining best value for money. The Dhall and other expert committees have recommended the setting up of a public procurement e-portal as a first element of ensuring transparency and competition.

Pre-qualifying Criteria:

- iv. There is present an exhortation in Rule 160 of the GFR that pre-qualifying criteria should be prudently selected so as not to stifle competition among potential bidders. However, as noted by the CVC in its report titled 'Common Irregularities/Lapses/ Observed in Stores/Purchase', public procurers tend to incorporate stringent qualification criteria to reduce the risk of failure on counts of quality/timely delivery etc. These criteria are often based on past experience, financial strength, having suitable and sufficient resources to deliver the contracted goods or services successfully. Sometimes these criteria are prescribed unknowingly but in many cases they are manipulated to favour particular firms or restrict participation.

The report no 15 of 2010-11 of the CAG 'Procurement of Stores and Machinery in Ordnance Factories', cites instances of such competition restricting practices to favour a few select firms. For ensuring a level playing field, it is essential that no prospective bidder be denied the

opportunity of tendering for reasons irrelevant to the capability and resources to perform the contract efficiently.

Inadequate Timelines to Participate:

- v. Often the response time granted for bid submission is unrealistically short, this is despite Rule 150(v) of GFR which prescribes that minimum time for submission of bids should not be less than three weeks, and four weeks in case of Global Tender Enquiry, from the date of publication of tender notice or availability of bidding documents for sale, whichever is later. This leads to entry barriers, as only a few firms which would have been acquainted with the functioning of the department concerned would have had advance knowledge and preparation time to participate in the bid. This leads to undue advantage to a small number of suppliers who are in the know of things.

Compulsory publishing tender results:

- vi. At present, bidders often do not get to know the result of a bidding process. Neither the winning price nor the winning bidders are publicly declared and the public is not assured as to whether the conditions of the contract or the quantities being procured have not been modified during the processing of the tender. Effective disclosure about the entire tendering process would be ensured if results of tenders etc. are made public through the e-portal.

Delay in Procurement Decisions:

- vii. Delays in procurement decisions often mar the procurement process in India, resulting not only in over time and cost but malpractices as well. It is felt that the e-procurement portal, when set up, can be used to monitor delays. The system could be evolved to graduate from e-disclosure/e-tendering to a comprehensive e-procurement solution, comprising of receipt of bids, their technical and financial evaluation and declaration of results through the e-portal.

Lacunae in the bid challenge procedure:

- viii. Unsuccessful bidders to a government tender are merely notified through a regret card. The competent authority does not record/discard the reasons for failure of the bid. The details of successful bids leading to contracts awarded are not published owing to which a channel of redressal to the unsuccessful bidders to challenge the bids is absent.

Bid challenges are an important self-monitoring and self-implementing mechanism as they allow those most affected by the failure to apply national procurement laws to access redressal, thereby ensuring that problems in the procurement system are identified and addressed quickly and efficiently.

Restrictive Tendering Practices:

- ix. Rule 137 of GFR states that every authority delegate the financial powers to procure goods to promote competition in public procurement. The emphasis is on adoption of Open Tender Enquiry (OTE) in case of generic and standard items contained in Rule 151 of GFR and the use of limited tendering and single tendering in only very specific circumstances. Reports of

monitoring bodies like the CVC suggest that procuring agencies fail to utilise the open channel provided by OTE and tend to depend on Limited Tender Enquiry (LTE), thereby limiting competition, which in turn leads to cartel formation, higher rates and ensure success to select firms.

Registered Vendors:

- x. The most restrictive of the tendering practices is that of maintaining a list of 'Registered' vendors, as pointed out by several reports of experts, including the Dhall Commission report, 2011 and the report of the Energy and Resources Institute of India, 2011. Though the original purpose of such a list, as explained in Rule 142 of GFR, was to establish "reliable sources for procurement of goods commonly required for government use", the system is by and large being implemented to limit competition. The Railways, for example procures goods only from approved vendors registered with its Research, Development and Standardisation Organisations (RDSO) or its 9 production units. A firm that approaches the Railways is subjected to a detailed scrutiny and inspection for it to be approved to bid up to 5 percent of the purchase of a particular item and after some time it can be upgraded to bid for up to 25 percent of the total requirement of an item and only 3 years thereafter can it become a Part I vendor "eligible to bid for 100 percent supply of an item."

The combined effect of the limited number of registered vendors, the time taken in registration and the very volume of supply allowed to a newly registered vendor makes for a situation that does not lead to adequate development of new vendors so as to encourage competition, economy and effectiveness. The DGS&D also prepares an item-wise list of eligible and capable suppliers. But, as observed in the reports of the CVC, the necessary precautions of periodically updating the list of 'Registered' vendors, encouraging relevant new firms to get them registered to break the monopoly of existing firms prone to forming cartels, the practice of registering new suppliers at any time on fulfilment of required conditions (as exhorted in the GFR) is hardly ever done.

Tedious Procedure:

- xi. Accessibility tedious procedure, such as lack of easy availability of tender documents, lengthy and restrictive procedure in getting registered defects in contract management such as delays in payments also has the effect of discouraging big and efficient firms from participating in the tendering process. A switch over to e-tendering and conducting of the entire procurement process electronically within given time lines would help to obviate these types of difficulties and obtain the participation of the best qualified firms in the tendering process.

Absence of an Independent Grievance Redressal Mechanism:

- xii. Under the present system, the bidder who is aggrieved has no option but to file his complaint with the procuring agency itself. Obviously, if the procuring officials are themselves responsible for causing grievance, there is little chance of the aggrieved bidder to get his due from such a redressal system. Arbitration proceedings are the other solution if the tender document itself so

provides and the bidder can seek redressal under the Indian Arbitration and Conciliation Act 1996. However, reference to the High Court under Article 226 of the Constitution of India against the decision of the procurement authority/arbitration order can prove to be a lengthy and costly process, given the huge pendency in the Indian courts. Moreover in the absence of a legal framework for procurement, determination of violation of guidelines may come within a grey area.

Weakness of the Monitoring System:

- xiii. The CAG and CVC are the two main monitoring bodies. Although the CAG audits the expenditure, i.e. the tendering process, these audits are conducted *ex-post facto*. The Action Taken Reports called for by the audit do not have a specific time limit for compliance by the departments and ministries in whose tendering process irregularities have been found. Consequently, the delayed response does not allow timely remedial action, since by that time the contract may have already been substantially executed.

The CVC supervises investigations under the Prevention of Corruption Act, 1988 and issues various guidelines specific to public procurement to curb corruption. The limitation of both these monitoring authorities is that they cannot deal with private parties indulging in fraud. The CVC deals with public servants and excludes misdemeanor by private parties. The CAG's audit also concerns itself with the use of public money for the purpose for which it was allocated to the concerned Ministry by the Parliament and thereby has no impact on malpractices by private bidders.

The Indian Competition Act, 2002 and its applicability to the demand side:

- xiv. An interesting perspective has been brought out in the study 'Competition Issues in Public Procurement (India)' by The Energy and Resources Institute, Delhi 2011 in this regard. It has been highlighted that although sections 3 and 4 of the Competition Act, 2002 can be applied in the case of suppliers of goods if they resort to anticompetitive practices and abuse of dominant position, the recent orders of the Competition Commission indicate that it would be difficult to bring a procurement agency within the ambit of the Act, even though it may be indulging in a competition-restricting practice. Vide the finding by the OECD in its 2010 report 'Policy Roundtables – Collusion and Corruption in Public Procurement', under the relevant provisions of the Competition Act, when firms indulge in anti-competitive conduct in collusion with public officials, the Competition Commission lacks enforcement power to investigate the public officials involved.

Records Management:

Despite a tradition of maintaining and preserving original records, not much gain is made of institutional memory and little is done in the area of performance indicators and other exception statements for management to monitor and control. In fact, such monitoring on the basis of past experience is not possible in the absence of electronic record keeping. The World Bank, in its

2003 Report on India, recommends the computerisation of the present data base and a set of performance indicators.

B. Lacunae in the Procurement of Goods

- i. 'Goods' as defined in Rule 136 of GFR do not include service or maintenance contracts necessary for maximising the life cycle cost of a product. The definition needs to be modified to include services incidental to the supply of the goods for its maintenance for a period of at least three-five years. The concept of life-cycle cost should also include energy efficiency, particularly for electronic, electrical and mechanical equipment.
- ii. Negotiations with the lowest bidder are permitted in exceptional circumstances as per the GFR. The provision leaves scope for misuse in the absence of any prescribed criteria for need of negotiation.
- iii. It is sometimes found that the bidding documents are prepared in a certain way so as to favour pre-determined bidders. To ensure against this, it is necessary to see that bidding documents follow standard procedures/best practices. It has been recommended that standard bidding documents should be made available for mandatory use by procuring departments. The procuring departments may add special conditions specific to their requirements, without changing the mandatory framework.
- iv. To ensure objectivity in the specifications of the items to be supplied, an important requirement would be to call for adherence to national/international standards.

C. Lacunae in the Procurement of Services

Lack of Guidelines:

- i. Government offices nowadays are increasingly outsourcing services like engagement of consultants, management contracts, maintenance of civil works, collection of user charges and even routine jobs of hiring of taxies, caretaking of office premises, engaging data entry and security services etc. While the GFR lays down the basic rule that limited tenders may be issued for contract values up to Rs. 25 lakh and for jobs above this amount, advertisements be issued, the government departments face problems in ensuring economic and competitive procurement of services, as this is a new subject where very little guidance is provided by the GFR.

Hiring of Consultants:

- ii. The GFR 2005 and Manual of Policy Procedure of Employment of Consultants, August 2006 issued by the Department of Expenditure, provide guidance on selecting professionals for a normal assignment. But these guidelines are not adequate for complex assignments requiring professionals or experts with appropriate domain knowledge. The departments tend to hire a single consultancy firm to handle the multidisciplinary tasks of project preparation, leading to uneven quality of services for each of the disciplines. The model documents published by the Department of Expenditure require that legal, financial and technical consultants should be engaged separately. However, in practice, what often transpires is that a technical consultant may be asked to hire legal consultants for drafting a contract, which may result in expert legal advice

being denied to the project, as a technical consultant may have preference for engaging a low cost lawyer to maximise his own profit.

Lowest Financial Bid:

- iii. The lowest financial bid should not be the sole criterion for selection of a consultant. An adviser and consultant can only be selected through a technical cum financial evaluation, where the technical competence should be attributed sufficient importance.

Conflict of Interest:

- iv. This arises in cases where the consultant has earlier worked for the project authority and is now appointed as an expert or consultant or where the consultant has an ownership interest of a continuing business or lending interest with a potential bidder or is involved in owning or operating entities resulting from the project or bids or works arising from the project. Conflict of interest is also known to arise when conflicting assignments are given to the same person, such as asking the person who prepared the project design to do its environmental audit.

Ad hoc Approach by Some Government Departments:

- v. While some departments are following the Department of Expenditure's three model documents on Model Request for Proposal for the Selection of technical advisers, financial advisers, and legal consultants, several departments are following an *ad hoc* system of appointing consultants, resulting in wrong selection of consultants and payment of unjustified fees to them.

Success-fee Based Payments:

- vi. In cases such as auction of national assets and disinvestment of public sector companies, where government receipts need to be maximised, a carefully formulated form of "success fee" need not be ruled out. But this form of hiring of consultants should be discouraged in general, according to experts.

Need for Model Contracts:

- vii. The present lacunae could be addressed to an extent by development and publishing of suitable templates for different types of services which are commonly required by the government departments.

D. Lacunae in the Procurement of Works

As observed by the Committee on Public Procurement, this component often represents the largest proportion of the overall expenditure on public procurement. The major weaknesses in the system have been noted to be the following:

Outdated Procedures:

- i. Each Public Works Department (PWD) maintains a data book, providing the rate for each standard item of work, estimated on cost of material, labour and overheads. Departmental estimates for works and the Schedule of rates for tendering are based on these rates. Though the Central PWD is reasonably up to date, the departmental estimates are generally unreliable and out-dated. The updation is merely an adjustment for inflation and does not regard reworking,

use of new materials, methods of construction, plant depreciation, overheads and reasonable profit.

Limited Entry to Approved Registered Contractors:

- ii. Advertised tenders are opened only to approved registered contractors whose qualifications and capacity have been verified. But the registration process is ridden with political patronage resulting in the automatic qualification of a contractor once he obtains registration.

Scope for Negotiation:

- iii. Approval of awards are based on the departmental estimates, which in turn, are based on the outdated data. This provides an opportunity for negotiations to purportedly bring the quotations closer to the departmental estimates. Such negotiations afford opportunity for subjectivity and bias.

Sub-contracting to Unqualified Parties:

- iv. Major contractors tend to sub-contract a major portion to other contractors, who are often unqualified. This deleteriously impacts the quality of the work.

No Provision for Price Adjustment:

- v. Contracts do not provide for adequate price adjustment mechanism and fair claim and dispute resolution mechanism. Contract supervision is uneven and subject to pervasive corruption.

Inefficiency of Item Rate Contracts:

- vi. In the existing system of procurement of works in India, procurement on unit price or rate system is prevalent. In the system, the government provides detailed designs and estimates of quantities of different units of work to be done, prescribes the specifications, testing etc. and pays the contractor on the basis of measurement of quantity of work done in respect of each item comprising the work. This antiquated method, abandoned in the developed countries, usually results in time and cost over-runs, as concluded by the Report of the Committee on Public Procurement. Disputes also abound in case of item-rate contracts, which lock up the funds of the construction industry, as arbitration proceedings take a long time and sometimes, even after the arbitration awards there is further contest in the courts.

Absence of substantive provisions in GFR 2005 for procurement of works:

This responsibility of framing substantive provisions has been left to the different government departments resulting in the generation of disputes.

Competition Law and associated statutory provisions.

India was one of the last major economies to introduce a modern competition law regime. Although India's Competition Act was enacted in 2002, its enforcement was delayed and the Competition Commission of India (CCI) has been fully functional only from May 20, 2009. The overarching aim of the Competition Act is to create and sustain competitive markets and work for the welfare of the Indian consumer.

Genesis

The emergence of regulatory governance in India is of recent origin. Regulation of markets became a necessity in the aftermath of globalisation and economic liberalisation of the economy as economy was thrown open to competition within and from abroad. In a free market economy, vested interest groups, large monopolistic firms and other stakeholders could distort the process of competition and deprive markets of their ability to deliver efficient results. It was realised that India's old competition law i.e. the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 had outlived its utility and a new law was needed in line with new economic philosophy to protect and nurture the competitive process. Based on the recommendation of an expert committee, the Competition Act, 2002 (hereinafter the Act) was enacted in the year 2002 and partly notified in January 2003. The Act however, had a legal challenge, which delayed the establishment of the Commission and enforcement of the Act. The Act was subsequently amended by the Competition (Amendment) Act, 2007 embodying the modern principles of competition law. As in most modern competition laws, the Indian law also seeks to (a) prohibit anti-competitive agreements, including cartels; (b) prevent abuse of dominant position; (c) regulate mergers and acquisition, and (d) propagate competition advocacy. The Act has established a Commission comprising of a Chairperson and a maximum of 6 members. The Commission is vested with the same broad powers as are available to competition authorities in other jurisdictions.

The era of enforcement against monopolies and restrictive trade practices gave way to competition enforcement with the constitution of the Competition Commission of India (CCI) in 2009. The overarching aim of the Commission is to create and sustain fair competition in the economy that will provide

a 'level playing field' to the producers and make the markets work for the



भारतीय प्रतिस्पर्धा आयोग
Competition Commission of India

welfare of the consumers. An appellate body called the Competition Appellate Tribunal was later set up in May 2009, with final appeal lying to the Supreme Court of India. In 2009, the earlier MRTP Act was repealed and the MRTP Commission established under that Act was abolished. MRTP Commission's pending cases were transferred to CCI.

Competition Jurisprudence

Enforcement of competition law by CCI was questioned by parties in High Courts, Competition Appellate Tribunal and the Supreme Court. Issues raised in these forums pertained to jurisdiction of CCI and also certain innate issues of competition jurisprudence. In the initial days of competition enforcement, the High Courts ruled that CCI has no retrospective jurisdiction but has authority to investigate anticompetitive matters of continuing nature. In 2010 in the case of Competition Commission of India vs Steel Authority of India Limited, where initial investigation orders of CCI were appealed against and challenged in the appellate tribunal, the Supreme Court pronounced a landmark judgment and limited the intervention of appellate authority in prima facie investigation orders of CCI. Hon'ble Supreme Court, in this judgment, pronounced guidelines on several issues relating to enforcement of the Act, which have become guiding force for the Commission in enforcing the law.

Bid-rigging under the Competition Act, 2002

The Competition Act, 2002 (the Act) evaluates anti-competitive practices based either on presumptive rule approach or on 'rule of reason' approach. Four types of agreements among enterprises or association of enterprises etc. engaged in identical or similar trade of goods or services (horizontal agreements), including cartels, shall be presumed to have appreciable adverse effect on competition and shall be void. These four types of agreements are enumerated in the Act [section 3(3)] as follows:

- a) Directly or indirectly determines purchase or sale of prices;
- b) Limits or controls production, supply, markets, technical development, investment or provision of services;
- c) Shares the market or source of production or provision of services by way of allocation of geographical area or market, or type of goods or services, or number of customers in the market or any other similar way;
- d) Directly or indirectly results in bid rigging or collusive bidding.

Bid rigging or collusive bidding is, thus, one of the four horizontal agreements that shall be presumed to have appreciable adverse effect on competition.

The Explanation to section 3(3) of the Act defines "bid rigging" as "any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding". Bid rigging takes place when bidders collude and keep the bid amount at a pre-determined level. Such pre-determination is by way of intentional manipulation by the members of the bidding group. Bidders could be actual or potential ones, but they collude and act in concert.

Bid rigging is anti-competitive

Bidding, as a procedure, is intended to enable the procurement of goods or services on the most favourable terms and conditions. Invitation of bids is resorted to both by Government (and Government entities) and private bodies (companies, corporations etc.). But the objective of securing the most favourable prices and conditions may be negated if the prospective bidders collude or act in concert. Such collusive bidding or bid rigging contravenes the very purpose of inviting tenders and is inherently anti-competitive.

Collusive bidding or bid rigging may be of different kinds, namely, agreements to submit identical bids, agreements as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids), agreements not to bid against each other, agreements on common norms to calculate prices or terms of bids, agreements to squeeze out outside bidders, agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis. Any agreement as to the bids which any of the parties may offer at an auction for the sale of goods or any agreement through which any party agrees to abstain from bidding for any auction for the sale of goods, which eliminates or distorts competition will be captured by section 3 (3)(d) of the Act.

Collusive bidding or bid rigging may occur in various ways. Some of the most commonly adopted ways are:

- agreements to submit identical bids
- agreements as to who shall submit the lowest bid,
- agreements for the submission of cover bids (voluntarily inflated bids)
- agreements not to bid against each other,
- agreements on common norms to calculate prices or terms of bids
- agreements to squeeze out outside bidders
- agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis
- agreement as to the bids which any of the parties may offer at an auction for the sale of goods or any agreement through which any party agrees to abstain from bidding for any auction for the sale of goods, which eliminates or distorts competition

Inherent in some of these agreements, is a compensation system to the unsuccessful bidders by dividing a certain percentage of profits of successful bidders.

Bid rigging or collusive bidding is treated with severity in the law. If bid rigging takes place in Government tenders, it is likely to have severe adverse effects on its purchases and on public spending.

The Public Procurement Bill, 2012

HIGHLIGHTS OF THE BILL

Context

The value of public procurement in India, i.e. procurement by governments and their entities, is estimated to be Rs12-15 lakh crores per annum, or 15-20% of the GDP. The Planning Commission notes that globally, procurement is vulnerable to misconduct, and losses due to inappropriate procurement procedures range between 20 and 30%.

Currently there is no single law specifically governing procurement by the Central Government (the government). Instead, public procurement is regulated by the General Financial Rules, 2005 (GFR) and guidelines issued by the Central Vigilance Commission (CVC) and respective ministries, departments and Public Sector Undertakings (PSUs).

Any misconduct is prosecuted under the provisions of the Competition Act, 2002 and the Prevention of Corruption Act, 1988 (PCA). Two states, Karnataka and Tamil Nadu, have enacted their own laws on public procurement – the Karnataka Transparency in Public Procurements Act, 1999 and the Tamil Nadu Transparency in Tenders Act, 1998 (TN Law) respectively.

A Group of Ministers appointed the Committee on Public Procurement (CoPP) in January, 2011 to suggest measures to ensure transparency, efficiency and economy and strengthen practices in public procurement. Separately, the Planning Commission drafted a Public Procurement Bill (Draft Bill, 2011) based on the United Nations Commission on International Trade Law's model

procurement law (UNCITRAL Law). The Public Procurement Bill, 2012 is based on the CoPP's recommendations and shares various features with the UNCITRAL Law and the World Trade Organisation's Agreement on Government Procurement (GPA).

Key Features

Applicability of the Bill

- i. The Bill is applicable to all central government ministries, departments, central PSUs, constitutional and statutory bodies and other organisations owned, controlled, or substantially funded by the central government.
- ii. The following procurements are exempted from applicability of the Bill: (a) procurements whose value is below Rs 50 lakh; (b) emergency procurement for disaster management; and (c) procurements for national security or strategic purposes. Further, the government may exempt procurements made under foreign aid programmes. In addition, the government may exempt any procurement, or class of procurements or procuring entities from the application of any of the provisions of the Bill through a notification.

General principles

- i. The Bill entrusts the procuring entity with the responsibility to ensure certain norms for procurements. These include: (a) efficiency, economy and transparency; (b) fair and equitable treatment to bidders; (c) competition; (d) prevention of corrupt practices; and (e) reasonable price and consistent quality in procurement.
- ii. The government can prescribe a code of integrity, applicable to officials of a procuring entity and bidders. The Bill lists provisions to be included in the code and states that the procuring entity is empowered to take action against a bidder for violating the code.
- iii. The Bill allows the government to impose requirement(s) for offsets¹ in the procurement contracts. The government can also mandate procurement from, provide purchase preference to, or limit competition to any category of bidders on account of: (a) promotion of domestic industry; (b) socio-economic policy; (c) any other duly notified government policy; and (d) public order, morality or safety, among others.

Procurement process

- i. The Bill permits a procuring entity to engage in a pre-qualifying process to identify qualified bidders before inviting bids. The entity may also register reliable bidders for a recurring or commonly procured item.
- ii. The procuring entity shall specify the evaluation criteria in bid documents. The successful bid will be selected on the basis of lowest price and/or most advantageous bid as specified in the bidding document.
- iii. The procuring entity may enter into a framework agreement or rate contract with bidders for items needed on a recurring/urgent basis, using open competitive bidding or any other method provided in the Bill.

¹ Offsets are condition(s) attached to a procurement, aimed at development of domestic content.

iv. The Bill allows a procuring entity to use the following methods of procurement:

Method	Conditions for use	Key Features
Open competitive bidding	Preferred method of procurement.	Procuring entity to invite bids by means of wide publicity. Reasons for using any other method to be recorded.
Limited competitive bidding	Where (a) only a limited number of bidders can supply; or (b) the time and cost for open competitive bidding is high; or (c) there is an urgent need for procurement.	Procuring entity shall invite bids by writing directly to all bidders or an adequate number of bidders. It can also invite registered bidders.
Two-stage bidding	Procuring entity is unable to frame detailed specifications at the onset, and needs bidders' inputs.	Only the bidders qualifying in the first (technical) stage will be considered for second (financial) stage.
Single source procurement	Where (a) a particular bidder is the only supplier; or (b) there is an urgent requirement; or (c) procurement from an earlier supplier is needed for standardisation or compatibility; or (d) use of any other method is not appropriate for the protection of national security.	The procuring entity shall solicit a bid from a single prospective bidder with the option to engage in negotiations.
Electronic reverse auction	Where it is feasible to formulate a detailed description and where high participation from bidders is likely.	Procuring entity to conduct reverse bidding using an electronic platform
Request for quotations and spot purchase	Where there is (a) an existing market for the required goods or services; or (b) an urgent requirement for maintenance or repairs. The value of the procurement should be less than the prescribed amount.	The procuring entity shall accept only one quote per bidder and select the lowest priced quote. The procuring entity may undertake spot purchase through a committee comprising three members.

Comparison of laws and regulations regarding public procurement

	GFR, CVC guidelines	Public Procurement Bill 2012	Draft Bill, 2011	International model laws
Applicability	All central government offices.	All central government offices, PSUs and government funded/controlled organisations.	All central government offices, PSUs & government funded/controlled organisations.	UNCITRAL: All public procurement. GPA: Specified by signatories.
Exemption	(a) During war; (b) Handicraft & small scale industry products; (c) Purchases below Rs 1,00,000.	Procurements that are (a) made under foreign aid agreements; (b) below specified value; (c) for disaster management; (d) towards national security or strategic purposes; or (e) exempted by a notification.	Procurements that are (a) for emergency disaster management; (b) towards national security or strategic purposes; or (c) exempted by a notification.	GPA: Procurements below a threshold value or made under international aid agreements. UNCITRAL: Procurements made under foreign aid agreements.
Code of integrity	No provision.	Specifies code of integrity.	Specifies code of conduct.	UNCITRAL: Specifies code of conduct
Exclusion of bidder	No explicit provisions.	For violating code of integrity.	For bribery or conflict of interest.	UNCITRAL: For bribery and unfair competitive advantage.
Publication of tenders	In Indian Trade Journal and one national newspaper.	On the Central Public Procurement Portal, procuring entity's website and as per regulations.	One prominent newspaper, government website and as per regulations.	GPA and UNCITRAL: As per procurement regulations.
Price negotiation	Not allowed after bid opening.	Allowed only for single source procurement.	Only for SSP, Request for Proposals (RFPs) & competitive negotiations.	UNCITRAL: Only for SSP, RFPs & competitive negotiations.
Note: These are general conditions. However, Government organizations may departmentally adopt various additional safeguards. For instances some PSUs and Departmentally run entities have already adopted an integrity pact.				

Public procurement Acts and Bills in States:

Only a hand full of States have taken any initiative towards legislation on public procurement. The list of such states are given below.

Sl		
1.	Andhra Pradesh	Andhra Pradesh cabinet approved creation of the AP public procurement bill to bring about more transparency in procurement procedures. However, a final legislation is still awaited.
2.	Karnataka	Karnataka Transparency in Public Procurement Act 1999 (KTPP Act).
3.	Kerala	Kerala Transparency in Public Purchase Bill, 2002
4.	Tamil Nadu	The Tamil Nadu Transparency in Tenders Act, 1998. The Tamil Nadu Transparency in Tenders Rules, 2000. And The Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012.
5.	Rajasthan	Rajasthan Transparency in Public procurement Act, 2012. Rajasthan Public Procurement Rules 2013 Public-Private Partnership Policy 2008
6.	Himachal Pradesh	Himachal Pradesh Public Procurement Bill 2010

Make In India

Almost all developed countries have traditionally used a complex variety of policy tools aimed at: (i) encouraging domestic bidder participation; (ii) enhancing indigenous domestic content in government supplies; and (iii) in clever use of services and outsourcing contracts for encouraging local employment.

“Make in India” is the International campaign² launched by the Honorable Prime Minister, Shri Narendra Modi, to attract Business Houses from around the world to invest and manufacture in India. The campaign “Make in India” is aimed at making India a manufacturing hub leading to economic transformation in India. The “Make in India” program includes new initiatives designed to facilitate investment, foster innovation, protect intellectual property rights and build best in class manufacturing infrastructure. Stronger manufacturing would increase productivity, employment and make growth more inclusive, while contributing to improved balance of account. The program lays emphasis on 25 sectors with focus on job creation and skill enhancement. These include: automobiles, chemicals, IT, textiles, ports, aviation, leather, tourism and hospitality, wellness, railways, design manufacturing, renewable energy, mining, bio-technology, pharmaceuticals and electronics etc. The government's push for manufacturing, is a facilitating force attracting corporate giants and to provide a better alternative than to China. The objective

² <http://www.makeinindia.gov.in/policy/new-initiatives/>

is also to ensure deep rooted growth and employment creation i.e. inclusive growth. Inclusive growth has become a central concern in the policymaking. Inclusive growth can easily be achieved through this “Make in India” campaign because the objectives of this campaign are prerequisite of inclusive growth or it can be said that “Make in India” is a reform to achieve inclusive growth.

This campaign aims to boost manufacturing growth by 10 percent per year, promoting and creating 100 million jobs over the next decade and bringing manufacturing up to 25 percent of India’s GDP. If this campaign were to propel the growth, its manufacturing sector would need to maintain its cost advantage in this environment of fierce competition.

In order to give effect to this new paradigm, the new Government have already moved forward with leveraging investments³ and fine-tuning industrial regulations for greater ease of doing business⁴.

There is a genuine need for rapid capacity building amongst senior policy-makers and procurement officials on strategic design of RFPs and projects so as to maximize their potential for enhancing domestic manufacturing and provisioning of services by the Indian industry. Two departments- Defense and DIET has already framed rules that require certain public procurement with indigenously manufactured components and preference to such goods and services.

³ Invest India, Investment Opportunities, available online <http://investindia.gov.in>.

⁴ DIPP (2014), Major Initiatives on Improving ‘Ease of Doing Business’ in India, available online http://dipp.nic.in/English/Investor/Doing_BusinessInitiative.pdf.

Forms of bid rigging

Bid-rigging conspiracies can take many forms, all of which impede the efforts of purchasers - frequently national and local governments - to obtain goods and services at the lowest possible price. Often, competitors agree in advance who will submit the winning bid on a contract to be awarded through a competitive bidding process. A common objective of a bid-rigging conspiracy is to increase the amount of the winning bid and thus the amount that the winning bidders will gain.

Bid-rigging schemes often include mechanisms to apportion and distribute the additional profits obtained as a result of the higher final contracted price among the conspirators. For example, competitors who agree not to bid or to submit a losing bid may receive subcontracts or supply contracts from the designated winning bidder in order to divide the proceeds from the illegally obtained higher priced bid among them. However, long-standing bid-rigging arrangements may employ much more elaborate methods of assigning contract winners, monitoring and apportioning bid-rigging gains over a period of months or years. Bid rigging may also include monetary payments by the designated winning bidder to one or more of the conspirators. This so-called compensation payment is sometimes also associated with firms submitting “cover” (higher) bids⁵.

Although individuals and firms may agree to implement bid-rigging schemes in a variety of ways, they typically implement one or more of several common strategies. These techniques are not mutually exclusive. For instance, cover bidding may be used in conjunction with a bid-rotation scheme. These strategies in turn may result in patterns that procurement officials can detect and which can then help uncover bid-rigging schemes.

Bid Suppression

In bid suppression schemes, one or more competitors who otherwise would be expected to bid, or who have previously bid, agree to refrain from bidding or withdraw a previously submitted bid so that the designated winning competitor's bid will be accepted.

Complementary Bidding

Complementary bidding (also known as 'cover' or 'courtesy' bidding) occurs when some competitors agree to submit bids that either are too high to be accepted or contain special terms that will not be acceptable to the buyer. Such bids are not intended to secure the buyer's acceptance, but are merely designed to give the appearance of genuine competitive bidding. Complementary bidding schemes are the most frequently occurring forms of bid rigging, and they defraud purchasers by creating the appearance of competition to conceal secretly inflated prices.

⁵ In most instances the compensation payment will be facilitated by the use of a fraudulent invoice for subcontracting works. In fact, no such work takes place and the invoice is false. The use of fraudulent consulting contracts can also be used for this purpose.

Bid Rotation

In bid rotation schemes, all conspirators submit bids but take turns to be the lowest bidder. The terms of the rotation may vary; for example, competitors may take turns on contracts according to the size of the contract, allocating equal amounts to each conspirator or allocating volumes that correspond to the size of each conspirator. A strict bid rotation pattern defies the law of chance and suggests that collusion is taking place.

Subcontracting

Subcontracting arrangements are often part of a bid rigging scheme. Competitors, who agree not to bid or to submit a losing bid, frequently receive subcontracts or supply contracts in exchange from the successful bidder. In some schemes, a low bidder will agree to withdraw its bid in favour of the next low bidder in exchange for a lucrative subcontract that divides the illegally obtained higher price between them.

Almost all forms of bid rigging schemes have one thing in common: an agreement among some or all of the bidders, which predetermines the winning bidder and limits or eliminates competition among the conspiring vendors.

Market allocation.

Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas. Competing firms may, for example, allocate specific customers or types of customers to different firms, so that competitors will not bid (or will submit only a cover bid) on contracts offered by a certain class of potential customers which are allocated to a specific firm. In return, that competitor will not competitively bid to a designated group of customers allocated to other firms in the agreement..

Players in a collusive bidding scheme

There may be several different kinds of actors playing a role in a collusive scheme. The main actors typically include a designated winning bidder, designated losing bidders and sometimes government officials.

- ✓ *The ring leader organizes the scheme and often also determines who will win the bid*
- ✓ *The designated losers submit higher cost “protective” bids to give the appearance of competition*
- ✓ *The designated winner, which may be a shell company, is awarded the contract and may outsource the work to one or more colluding members, in order to share profits and work*
- ✓ *Government insider(s) provide(s) privileged information to prospective bidders about cost estimates, competitive bids, and upcoming contracts*
- ✓ *Divers are companies outside the control of the cartel seeking to win the contract by placing a lower and often competitive bid*

Risk Assessment

Audit is expected to assess possible existence of risks of bid-rigging as part of its overall assessment of risks and then decide upon areas which would require in-depth study. Such assessment of risks require the auditor to study the systems, structures and competency of the procuring agency, and in particular observe whether the Procurement agency has taken its own measures to protect itself from exposure to risks of bid-rigging and manipulation. Risk assessment by the auditor will involve finding out whether the procurement agency is aware and takes necessary action as elucidated below:

Industry, Product and Service Characteristics That Help Support Collusion

In order for firms to implement a successful collusive agreement, they must agree on a common course of action for implementing the agreement, monitor whether other firms are abiding by the agreement, and establish a way to punish firms that cheat on the agreement. Although bid rigging can occur in any economic sector, there are some sectors in which it is more likely to occur due to particular features of the industry or of the product involved. Such characteristics tend to support the efforts of firms to rig bids. Indicators of bid rigging, which are discussed further below, may be more meaningful when certain supporting factors are also present. In such instances, procurement agents should be especially vigilant. Although various industry or product characteristics have been found to help collusion, they need not all be present in order for companies to successfully rig bids.

Small number of companies. Bid rigging is more likely to occur when a small number of companies supply the good or service. The fewer the number of sellers, the easier it is for them to reach an agreement on how to rig bids.

Little or no entry. When few businesses have recently entered or are likely to enter a market because it is costly, hard or slow to enter, firms in that market are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid rigging efforts.

Market conditions. Significant changes in demand or supply conditions tend to destabilize ongoing bid-rigging agreements. A constant, predictable flow of demand from the public sector tends to increase the risk of collusion. At the same time, during periods of economic upheaval or uncertainty, incentives for competitors to rig bids increase as they seek to replace lost business with collusive gains.

Industry associations. Industry associations⁶ can be used as legitimate, pro-competitive mechanisms for members of a business or service sector to promote standards, innovation and competition. Conversely, when subverted to illegal, anticompetitive purposes, these associations

⁶ Industry or trade associations consist of individuals and firms with common commercial interests, joining together to further their commercial or professional goals.

have been used by company officials to meet and conceal their discussions about ways and means to reach and implement a bid rigging agreement.

Repetitive bidding. Repetitive purchases increase the chances of collusion. The bidding frequency helps members of a bid-rigging agreement allocate contracts among themselves. In addition, the members of the cartel can punish a cheater by targeting the bids originally allocated to him. Thus, contracts for goods or services that are regular and recurring may require special tools and vigilance to discourage collusive tendering.

Identical or simple products or services. When the products or services that individuals or companies sell are identical or very similar, it is easier for firms to reach an agreement on a common price structure.

Few if any substitutes. When there are few, if any, good alternative products or services that can be substituted for the product or service that is being purchased, individuals or firms wishing to rig bids are more secure knowing that the purchaser has few, if any, good alternatives and thus their efforts to raise prices are more likely to be successful.

Little or no technological change. Little or no innovation in the product or service helps firms reach an agreement and maintain that agreement over time.

Checklist for Designing the Procurement Process to Reduce Risks of Bid Rigging

There are many steps that procurement agencies can take to promote more effective competition in public procurement and reduce the risk of bid rigging. Audit may scrutinize if Procurement agencies had considered adopting the following measures:

Be Informed Before Designing the Tender Process

Collecting information on the range of products and/or services available in the market that would suit the requirements of the purchaser as well as information on the potential suppliers of these products is the best way for procurement officials to design the procurement process to achieve the best “value for money”. Develop in-house expertise as early as possible.

- ❖ Be aware of the characteristics of the market from which you will purchase and recent industry activities or trends that may affect competition for the tender.
- ❖ Determine whether the market in which you will purchase has characteristics that make collusion more likely (see above).
- ❖ Collect information on potential suppliers, their products, their prices and their costs. If possible, compare prices offered in B2B procurement⁷.
- ❖ Collect information about recent price changes. Inform yourself about prices in neighboring geographic areas and about prices of possible alternative products.
- ❖ Collect information about past tenders for the same or similar products.

⁷ Business-to-Business (B2B) is a term commonly used to describe electronic commerce transactions between businesses.

- ❖ Coordinate with other public sector procurers and clients who have recently purchased similar products or services to improve your understanding of the market and its participants.
- ❖ If you use external consultants to help you estimate prices or costs ensure that they have signed confidentiality agreements.

Design the Tender Process to Maximise the Potential Participation of Genuinely Competing Bidders

Effective competition can be enhanced if a sufficient number of credible bidders are able to respond to the invitation to tender and have an incentive to compete for the contract. For example, participation in the tender can be facilitated if procurement officials reduce the costs of bidding, establish participation requirements that do not unreasonably limit competition, allow firms from other regions or countries to participate, or devise ways of incentivizing smaller firms to participate even if they cannot bid for the entire contract.

- ❖ Avoid unnecessary restrictions that may reduce the number of qualified bidders. Specify minimum requirements that are proportional to the size and content of the procurement contract. Do not specify minimum requirements that create an obstacle to participation, such as controls on the size, composition, or nature of firms that may submit a bid.
- ❖ Note that requiring large monetary guarantees from bidders as a condition for bidding may prevent otherwise qualified small bidders from entering the tender process. If possible, ensure amounts are set only so high as to achieve the desired goal of requiring a guarantee.
- ❖ Reduce constraints on foreign participation in procurement whenever possible.
- ❖ To the extent possible, qualify bidders during the procurement process in order to avoid collusive practices among a pre-qualified group and to increase the amount of uncertainty among firms as to the number and identity of bidders. Avoid a very long period of time between qualification and award, as this may facilitate collusion.
- ❖ Reduce the preparation costs of the bid. This can be accomplished in a number of ways:
 - ✓ By streamlining tendering procedures across time and products (e.g. use the same application forms, ask for the same type of information, etc.)⁸.
 - ✓ By packaging tenders (i.e. different procurement projects) to spread the fixed costs of preparing a bid.
 - ✓ By keeping official lists of approved contractors or certification by official certification bodies.
 - ✓ By allowing adequate time for firms to prepare and submit a bid. For example, consider publishing details of pipeline projects well in advance using trade and professional journals, websites or magazines.
 - ✓ By using an electronic bidding system, if available.

⁸ Streamlining the preparation of the bid nevertheless should not prevent procurement officials from seeking continuous improvements of the procurement process (procedure chosen, quantities bought, timing, etc.).

- ❖ Whenever possible, allow bids on certain lots or objects within the contract, or on combinations thereof, rather than bids on the whole contract only⁹. For example, in larger contracts look for areas in the tender that would be attractive and appropriate for small and medium sized enterprises.
- ❖ Do not disqualify bidders from future competitions or immediately remove them from a bidding list if they fail to submit a bid on a recent tender.
- ❖ Be flexible in regard to the number of firms from whom you require a bid. For example, if you start with a requirement for 5 bidders but receive bids from only 3 firms, consider whether it is possible to obtain a competitive outcome from the 3 firms, rather than insisting on a retendering exercise, which is likely to make it all the more clear that competition is scarce.

Define Entity's Requirements Clearly and Avoid Predictability

Drafting the specifications and the terms of reference (TOR) is a stage of the public procurement cycle which is vulnerable to bias, fraud and corruption. Specifications/TOR should be designed in a way to avoid bias and should be clear and comprehensive but not discriminatory. They should, as a general rule, focus on functional performance, namely on what is to be achieved rather than how it is to be done. This will encourage innovative solutions and value for money. How tender requirements are written affects the number and type of suppliers that are attracted to the tender and, therefore, affects the success of the selection process. The clearer the requirements, the easier it will be for potential suppliers to understand them, and the more confidence they will have when preparing and submitting bids. Clarity should not be confused with predictability. More predictable procurement schedules and unchanging quantities sold or bought can facilitate collusion. On the other hand, higher value and less frequent procurement opportunities increase the bidder's incentives to compete.

- ❖ Define requirements as clearly as possible in the tender offer. Specifications should be independently checked before final issue to ensure they can be clearly understood. Try not to leave room for suppliers to define key terms after the tender is awarded.
- ❖ Use performance specifications and state what is actually required, rather than providing a product description.
- ❖ Avoid going to tender while a contract is still in the early stages of specification: a comprehensive definition of the need is a key to good procurement. In rare circumstances where this is unavoidable, require bidders to quote per unit. This rate can then be applied once quantities are known.
- ❖ Define your specifications allowing for substitute products or in terms of functional performance and requirements whenever possible. Alternative or innovative sources of supply make collusive practices more difficult.
- ❖ Avoid predictability in your contract requirements: consider aggregating or disaggregating contracts so as to vary the size and timing of tenders.

⁹ Procurement officials should also be aware that, if wrongly implemented (e.g. in an easily predictable manner), the „splitting contracts“ technique could provide an opportunity to conspirators to better allocate contracts.

- ❖ Work together with other public sector procurers and run joint procurement. Avoid presenting contracts with identical values that can be easily shared among competitors.

Design the Tender Process to Effectively Reduce Communication among Bidders

When designing the tender process, procurement officials should be aware of the various factors that can facilitate collusion. The efficiency of the procurement process will depend upon the bidding model adopted but also on how the tender is designed and carried out. Transparency requirements are indispensable for a sound procurement procedure to aid in the fight against corruption. They should be complied with in a balanced manner, in order not to facilitate collusion by disseminating information beyond legal requirements. Unfortunately, there is no single rule about the design of an auction or procurement tender. Tenders need to be designed to fit the situation. Where possible, consider the following:

- ❖ Invite interested suppliers to dialogue with the procuring agency on the technical and administrative specifications of the procurement opportunity. However, avoid bringing potential suppliers together by holding regularly scheduled pre-bid meetings.
- ❖ Limit as much as possible communications between bidders during the tender process.¹⁰ Open tenders enable communication and signalling between bidders. A requirement that bids must be submitted in person provides an opportunity for last minute communication and deal-making among firms. This could be prevented, for example, by using electronic bidding.
- ❖ Carefully consider what information is disclosed to bidders at the time of the public bid opening.
- ❖ When publishing the results of a tender, carefully consider which information is published and avoid disclosing competitively sensitive information as this can facilitate the formation of bid-rigging schemes, going forward.
- ❖ Where there are concerns about collusion due to the characteristics of the market or product, if possible, use a first-price sealed bid auction rather than a reverse auction.
- ❖ Consider if procurement methods other than single stage tenders based primarily on price can yield a more efficient outcome. Other types of procurement may include negotiated tenders¹¹ and framework agreements¹².
- ❖ Use a maximum reserve price only if it is based on thorough market research and officials are convinced it is very competitive. Do not publish the reserve price, but keep it confidential in the file or deposit it with another public authority.

¹⁰ For example, if the bidders need to do a site inspection, avoid gathering the bidders in the same facility at the same time.

¹¹ In negotiated tenders the procurer sets out a broad plan and the tenderer(s) then work out the details with the procurer, thereby arriving at a price.

¹² In framework agreements, the procurer asks a large number of firms, say 20, to submit details of their ability in terms of qualitative factors such as experience, safety qualifications, etc., and then chooses a small number, say 5 tenderers, to be in a framework - subsequent jobs are then allocated primarily according to ability or may be the subject of further „mini“ tenders with each of the tenderers submitting a price for the job.

- ❖ Beware of using industry consultants to conduct the tendering process, as they may have established working relationships with individual bidders. Instead, use the consultant's expertise to clearly describe the criteria/specification, and conduct the procurement process in-house.
- ❖ Whenever possible, request that bids be filed anonymously (e.g. consider identifying bidders with numbers or symbols) and allow bids to be submitted by telephone or mail.
- ❖ Do not disclose or unnecessarily limit the number of bidders in the bidding process.
- ❖ Require bidders to disclose all communications with competitors. Consider requiring bidders to sign a Certificate of Independent Bid Determination¹³.
- ❖ Require bidders to disclose upfront if they intend to use subcontractors, which can be a way to split the profits among bid riggers.
- ❖ Because joint bids can be a way to split profits among bid riggers, be particularly vigilant about joint bids by firms that have been convicted or fined by the competition authorities for collusion. Be cautious even if collusion occurred in other markets and even if the firms involved do not have the capacity to present separate bids.
- ❖ Include in the tender offer a warning regarding the sanctions in your country for bid rigging, e.g. suspension from participating in public tenders for a certain period, any sanctions if the conspirators signed a Certificate of Independent Bid Determination, the possibility for the procuring agency to seek damages, and any sanctions under the competition law.
- ❖ Indicate to bidders that any claims of increased input costs that cause the budget to be exceeded will be thoroughly investigated¹⁴.
- ❖ If, during the procurement process, you are assisted by external consultants, ensure that they are properly trained, that they sign confidentiality agreements, and that they are subject to a reporting requirement if they become aware of improper competitor behaviour or any potential conflict of interest.

Carefully Choose Your Criteria for Evaluating and Awarding the Tender

All selection criteria affect the intensity and effectiveness of competition in the tender process. The decision on what selection criteria to use is not only important for the current project, but also in maintaining a pool of potential credible bidders with a continuing interest in bidding on future projects. It is therefore important to ensure that qualitative selection and awarding criteria are chosen in such a way that credible bidders, including small and medium enterprises, are not deterred unnecessarily.

¹³ A Certificate of Independent Bid Determination requires bidders to disclose all material facts about any communications that they have had with competitors pertaining to the invitation to tender. In order to discourage non-genuine, fraudulent or collusive bids, and thereby eliminate the inefficiency and extra cost to procurement, procurement officials may wish to require a statement or attestation by each bidder that the bid it has submitted is genuine, non-collusive, and made with the intention to accept the contract if awarded. Consideration may be given to requiring the signature of an individual with the authority to represent the firm and adding separate penalties for statements that are fraudulently or inaccurately made.

¹⁴ Cost increases during the execution phase of a contract should be carefully monitored as they may be a front for corruption and bribery.

- ❖ When designing the tender offer, think of the impact that your choice of criteria will have on future competition.
- ❖ Whenever evaluating bidders on criteria other than price (e.g., product quality, post-sale services, etc.) such criteria need to be described and weighted adequately in advance in order to avoid post-award challenges. When properly used, such criteria can reward innovation and cost-cutting measures, along with promoting competitive pricing. The extent to which the weighting criteria are disclosed in advance of the tender closing can affect the ability of the bidders to coordinate their bid.
- ❖ Avoid any kind of preferential treatment for a certain class, or type, of suppliers.
- ❖ Do not favour incumbents¹⁵. Tools that ensure as much anonymity as possible throughout the procurement process may counteract incumbent advantages.
- ❖ Do not over-emphasise the importance of performance records. Whenever possible, consider other relevant experience.
- ❖ Avoid splitting contracts between suppliers with identical bids. Investigate the reasons for the identical bids and, if necessary, consider re-issuing the invitation to tender or award the contract to one supplier only.
- ❖ Make inquiries if prices or bids do not make sense, but never discuss these issues with the bidders collectively.
- ❖ Whenever possible under the legal requirements governing the award notices, keep the terms and conditions of each firm's bid confidential. Educate those who are involved in the contract process (e.g., preparation, estimates, etc.) about strict confidentiality.
- ❖ Reserve the right not to award the contract if it is suspected that the bidding outcome is not competitive.

Raise Awareness amongst Staff about the Risks of Bid Rigging In Procurement

Professional training is important to strengthen procurement officials' awareness of competition issues in public procurement. Efforts to fight bid rigging more effectively can be supported by collecting historical information on bidding behaviour, by constantly monitoring bidding activities, and by performing analyses on bid data. This helps procurement agencies (and competition authorities) to identify problematic situations. It should be noted that bid rigging may not be evident from the results of a single tender. Often a collusive scheme is only revealed when one examines the results from a number of tenders over a period of time.

- ❖ Implement a regular training program on bid rigging and cartel detection for your staff, with the help of the competition agency or external legal consultants.
- ❖ Store information about the characteristics of past tenders (e.g., store information such as the product purchased, each participant's bid, and the identity of the winner).
- ❖ Periodically review the history of tenders for particular products or services and try to discern suspicious patterns, especially in industries susceptible to collusion¹⁶.

¹⁵ The incumbent is the company currently supplying the goods or services to the public administration and whose contract is coming to an end.

¹⁶ See "Industry, product and service characteristics that help support collusion" above.

- ❖ Adopt a policy to review selected tenders periodically.
- ❖ Undertake comparison checks between lists of companies that have submitted an expression of interest and companies that have submitted bids to identify possible trends such as bid withdrawals and use of sub-contractors.
- ❖ Conduct interviews with vendors who no longer bid on tenders and unsuccessful vendors.
- ❖ Establish a complaint mechanism for firms to convey competition concerns. For example, clearly identify the person or the office to which complaints must be submitted (and provide their contact details) and ensure an appropriate level of confidentiality.
- ❖ Make use of mechanisms, such as a whistleblower system, to collect information on bid rigging from companies and their employees. Consider launching requests in the media to invite companies to provide the authorities with information on potential collusion.
- ❖ Inform yourself about your country's leniency policy¹⁷, if applicable, and review your policy on suspension from qualification to bid, where there has been a finding of collusive activity, to determine whether it is harmonious with your country's leniency policy.
- ❖ Establish internal procedures that encourage or require officials to report suspicious statements or behaviour to the competition authorities in addition to the procurement agency's internal audit group and comptroller, and consider setting up incentives to encourage officials to do so.
- ❖ Establish cooperative relationships with the competition authority (e.g. set up a mechanism for communication, listing information to be provided when procurement officials contact competition agencies, etc.).

¹⁷ Such policies generally provide for immunity from antitrust legal proceedings to the first party to apply under the policy who admits its involvement in particular cartel activities, including bid rigging schemes, and agrees to cooperate with the competition authority's investigation.

Checklist for Detecting Bid Rigging In Public Procurement

Bid-rigging agreements can be very difficult to detect as they are typically negotiated in secret. In industries where collusion is common, however, suppliers and purchasers may be aware of longstanding bid-rigging conspiracies. In most industries, it is necessary to look for clues such as unusual bidding or pricing patterns, or something that the vendor says or does.

Look For Warning Signs and Patterns When Businesses Are Submitting Bids

Certain bidding patterns and practices seem at odds with a competitive market and suggest the possibility of bid rigging. Search for odd patterns in the ways that firms bid and the frequency with which they win or lose tender offers. Subcontracting and undisclosed joint venture practices can also raise suspicions.

- The same supplier is often the lowest bidder.
- There is a geographic allocation of winning tenders. Some firms submit tenders that win in only certain geographic areas.
- Regular suppliers fail to bid on a tender they would normally be expected to bid for, but have continued to bid for other tenders.
- Some suppliers unexpectedly withdraw from bidding.
- Certain companies always submit bids but never win.
- Each company seems to take a turn being the winning bidder.
- Two or more businesses submit a joint bid even though at least one of them could have bid on its own.
- The winning bidder repeatedly subcontracts work to unsuccessful bidders.
- The winning bidder does not accept the contract and is later found to be a subcontractor.
- Competitors regularly socialise or hold meetings shortly before the tender deadline.

Look For Warning Signs in All Documents Submitted

Telltale signs of a bid-rigging conspiracy can be found in the various documents that companies submit. Although companies that are part of the bid-rigging agreement will try to keep it secret, carelessness, or boastfulness or guilt on the part of the conspirators, may result in clues that ultimately lead to its discovery. Carefully compare all documents for evidence that suggests that the bids were prepared by the same person or were prepared jointly.

- Identical mistakes in the bid documents or letters submitted by different companies, such as spelling errors.
- Bids from different companies contain similar handwriting or typeface or use identical forms or stationery.
- Bid documents from one company make express reference to competitors' bids or use another bidder's letterhead or fax number.
- Bids from different companies contain identical miscalculations.
- Bids from different companies contain a significant number of identical estimates of the cost of certain items.

- The packaging from different companies has similar postmarks or post metering machine marks.
- Bid documents from different companies indicate numerous last minute adjustments, such as the use of erasures or other physical alterations.
- Bid documents submitted by different companies contain less detail than would be necessary or expected, or give other indications of not being genuine.
- Competitors submit identical tenders or the prices submitted by bidders increase in regular increments.

Look For Warning Signs and Patterns Related To Pricing

Bid prices can be used to help uncover collusion. Look for patterns that suggest that companies may be coordinating their efforts such as price increases that cannot be explained by cost increases. When losing bids are much higher than the winner's bid, conspirators may be using a cover bidding scheme. A common practice in cover pricing schemes is for the provider of the cover price to add 10% or more to the lowest bid. Bid prices that are higher than the engineering cost estimates or higher than prior bids for similar tenders may also indicate collusion. The following may be suspicious:

- Sudden and identical increases in price or price ranges by bidders that cannot be explained by cost increases.
- Anticipated discounts or rebates disappear unexpectedly.
- Identical pricing can raise concerns especially when one of the following is true:
 - Suppliers' prices were the same for a long period of time,
 - Suppliers' prices were previously different from one another,
 - Suppliers' increased price and it is not justified by increased costs, or
 - Suppliers' eliminated discounts, especially in a market where discounts were historically given.
- A large difference between the price of a winning bid and other bids.
- A certain supplier's bid is much higher for a particular contract than that supplier's bid for another similar contract.
- There are significant reductions from past price levels after a bid from a new or infrequent supplier, e.g. the new supplier may have disrupted an existing bidding cartel.
- Local suppliers are bidding higher prices for local delivery than for delivery to destinations farther away.
- Similar transportation costs are specified by local and non-local companies.
- Only one bidder contacts wholesalers for pricing information prior to a bid submission.
- Unexpected features of public bids in an auction, electronic or otherwise -- such as offers including unusual numbers where one would expect a rounded number of hundreds or thousands -- may indicate that bidders are using the bids themselves as a vehicle to collude by communicating information or signalling preferences.

Look for Suspicious Statements at All Times

When working with vendors watch carefully for suspicious statements that suggest that companies may have reached an agreement or coordinated their prices or selling practices.

- Spoken or written references to an agreement among bidders.
- Statements that bidders justify their prices by looking at “industry suggested prices”, “standard market prices” or “industry price schedules”.
- Statements indicating that certain firms do not sell in a particular area or to particular customers.
- Statements indicating that an area or customer “belongs to” another supplier.
- Statements indicating advance non-public knowledge of competitors’ pricing or bid details or foreknowledge of a firm’s success or failure in a competition for which the results have yet to be published.
- Statements indicating that a supplier submitted a courtesy, complementary, token, symbolic or cover bid.
- Use of the same terminology by various suppliers when explaining price increases.
- Questions or concerns expressed about Certificates of Independent Bid Determination, or indications that, although signed (or even submitted unsigned), they are not taken seriously.
- Cover letters from bidders refusing to observe certain tender conditions or referring to discussions, perhaps within a trade association.

Look For Suspicious Behaviour at All Times

Look for references to meetings or events at which suppliers may have an opportunity to discuss prices, or behaviour that suggests a company is taking certain actions that only benefit other firms. Forms of suspicious behaviour could include the following:

- Suppliers meet privately before submitting bids, sometimes in the vicinity of the location where bids are to be submitted.
- Suppliers regularly socialize together or appear to hold regular meetings.
- A company requests a bid package for itself and a competitor.
- A company submits both its own and a competitor’s bid and bidding documents.
- A bid is submitted by a company that is incapable of successfully completing the contract.
- A company brings multiple bids to a bid opening and chooses which bid to submit after determining (or trying to determine) who else is bidding.
- Several bidders make similar enquiries to the procurement agency or submit similar requests or materials.

A Caution about Indicators of Bid Rigging

The indicators of possible bid rigging described above identify numerous suspicious bid and pricing patterns as well as suspicious statements and behaviours. They should not however be taken as proof that firms are engaging in bid rigging. For example, a firm may have not bid on a particular

tender offer because it was too busy to handle the work. High bids may simply reflect a different assessment of the cost of a project. Nevertheless, when suspicious patterns in bids and pricing are detected or when procurement agents hear odd statements or observe peculiar behaviour, further investigation of bid rigging is required. A regular pattern of suspicious behaviour over a period of time is often a better indicator of possible bid rigging than evidence from a single bid. Carefully record all information so that a pattern of behaviour can be established over time.

Corruption and Bid-Rigging

A study by Department of Institutional Integrity (INT), World Bank show that procurement is particularly vulnerable to fraud and corruption. This vulnerability is primarily due to the large amounts of money involved and the difficulties, at times, to effectively supervise a large number of contracts. In addition to procurement, Detailed Implementation Reviews (DIRs) have found other vulnerabilities in contract and financial management. INT most often encounters occur in the area of Procurement - corrupt payments to government officials and steering of contracts to favored bidders; collusion among bidders in obtaining contracts; and submission of fraudulent bids intended to circumvent the competitive bidding process.

How does a corruption scheme in procurement work?

A corruption scheme often involves more than one type of misconduct. A corrupt scheme in procurement often begins with a demand for, or offer of payment, followed by bid rigging and finally fraud to cover up the scheme:

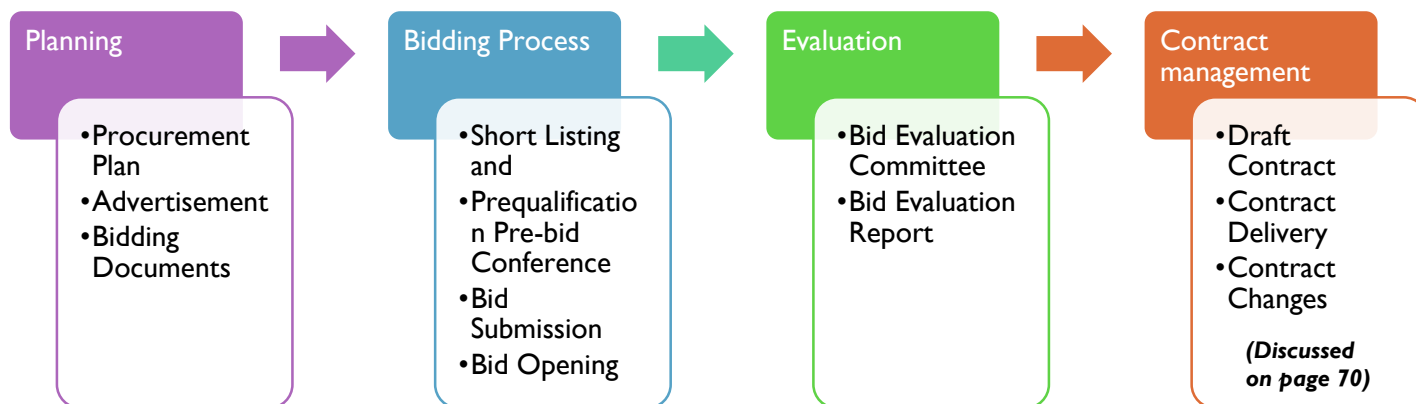
- Demand for payment. A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe, in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits.
- Bid rigging. To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), government officials manipulate the bidding process to exclude other (presumably cheaper) competitors.
- Fraud. To recover the cost of the bribe, and to exploit the corrupt relationship, the firm—usually with the knowledge and complicity of government officials—inflates prices, bills for work not performed, fails to meet contract specifications or substitutes substandard products during implementation. This often requires further corrupt payments to inspectors or auditors.

What are the goals of any procurement-related corruption strategy?

The aim of corruption is to steer the contract to the favored bidder without detection. This is done in a number of ways, including:

- Avoiding competition through, e.g., unjustified sole sourcing or direct contracting awards.
- Favoring a certain bidder by tailoring specifications, sharing inside information, etc.
- Excluding qualified bidders through, e.g., restricted circulation of advertisements, biased evaluation processes, or bid tampering.
- Avoiding detection of the schemes by negotiating the removal of audit rights, using shell companies to disguise the official's economic interest, etc.

Phases in the procurement cycle where corruption can take place



Procurement Plan

The Procurement Plan should be scrutinized for the justification of items, procurement methods, review thresholds, and possible contract splitting. The plan includes agreements on the contract packages for procuring the identified goods, works, and services; the methods for procuring them; and the prior review thresholds. It further lists the respective timetables for the various procurement activities.

The packaging of contracts is designed to attract as many qualified bidders as possible in order to secure the best price and quality. Legitimate considerations regarding decisions to package certain contracts include: (i) capacity of potential bidders to deliver the outputs specified; (ii) risks related to the bundling or unbundling of items; (iii) centralized versus decentralized procurement; and (iv) sequencing of procurement actions in line with needs.



Red flag indicating unnecessary items

Unnecessary items

- The list of contracts for goods, works, and services is not consistent with the project requirements.

Red flags indicating unjustified sole sourcing or direct contracting

Non-compliance

- Use of sole sourcing or direct contracting when the Procurement Plan calls for use of more competitive methods
- Use of sole sourcing or direct contracting for new procurement actions (not listed in the Procurement Plan) without obtaining no-objection

Inadequate justification

- Inadequate or misleading justification or documentation as required by the procurement guidelines (e.g., stating that the equipment is proprietary when, in fact, it is not)

Multiple sole source awards

- Multiple sole source awards or direct contracting to the same company or within the same procuring unit
- Certain contract amendments that would benefit from competition or where the items should have been procured separately (e.g., the additional activities are not a natural continuation of the existing contract)



Red flags indicating contract splitting

Unusual splits

- Issuing two or more contracts for identical items over a short period of time for no apparent reason, resulting in the application of a less competitive procurement method
- Procuring items that should have been procured jointly are procured by each sub-unit (e.g., each district office procures its own vehicle rather than the agency procuring all vehicles)
- Splitting items that are normally procured together in order to keep individual package values below thresholds (e.g., procurement of computers and related accessories is split into separate contracts)

Many awards just below thresholds

- Awarding an unreasonably large number of contracts just below NCB¹⁸ or QCBS¹⁹ thresholds (e.g., use of CQS²⁰ method for two or more consultancy contracts versus one contract under QCBS)

Excessive use of shopping

- Using shopping procedures excessively for the purchase of identical or similar items.
- Two or more related and simultaneous purchases from the same supplier in amounts just under the NCB threshold

Red flags indicating inappropriate bundling

Inappropriate bundling

- There is a complaint from one or more bidders about the bundling of goods, works, and services
- Items to be procured within a proposed bundle are not related
- There is a significant reduction in the number of potential or actual bidders resulting from the bundling
- The agency cannot justify the bundling on the basis of cost savings or reduced integration costs or risks

Advertisement

Advertisements can be manipulated by limiting the circulation of the Specific Procurement Notice (SPN) or the request for Expression of Interest (EOI). Sometimes, bidding opportunities were not advertised at all. To cover up this fact, officials produced false advertisements that were never printed or were printed by the newspaper in just one copy. In one extreme example, all copies of the newspaper with the advertisement were bought by one party²¹.



Red flags in advertisement

Restricted circulation

- Not advertising the request for SPN or EOI (as required under procurement rules)
- Limiting circulation by posting the advertisement in a local rather than national newspaper, when a national newspaper would have resulted in more bids

¹⁸ National Competitive Bidding

¹⁹ Quality and Cost Based Selection

²⁰ Selection Based on the Consultants' Qualifications

²¹ Noted by World Bank.

Short notice

- Period between the advertisement and the bid submission deadline is very short

Inadequate information

- Providing incomplete contact information so that potential bidders do not know where to submit bids or from whom to request clarification
- Drafting overly vague descriptions of the goods, works, or services required so that bidders cannot determine their interest
- Drafting overly narrow descriptions of the goods, works, or services required to exclude qualified bidders

Bidding Documents

In providing inadequate or erroneous information for the preparation of bids, corrupt officials

A review by World Bank of a bidding document for the construction of three road segments in one country identified a range of red flags indicating potentially unnecessary and inappropriate line items: (i) a large number of four-wheel drive vehicles to be used by the supervision consultants, though many would be stationed at the Road Agency's headquarters; (ii) the number of vehicles in the bill of quantities (BOQ) did not vary according to the length of the road or size of the contract; (iii) training abroad for government officials was included in the scope of the contractor's work; and (iv) a provision for the contractor to pay for the supervision consultant's staff.

From World Bank hand book

may effectively exclude qualified bidders. Bidding documents must be prepared for each proposed procurement action involving ICB²², NCB²³, and the selection of consulting firms. The thresholds for these contracts are established in the project's approved Procurement Plan. The bidding documents, issued by the Borrower, inform potential bidders how bids should be prepared, the evaluation criteria, and the contract requirements.

Rigged specifications. In a competitive market for goods and services, any specifications that seem

to be drafted in a way that favors a particular company deserve closer scrutiny. For example, specifications that are too narrow can be used to exclude other qualified bidders or justify improper sole source awards. Unduly vague or broad specifications can allow an unqualified bidder to compete or justify fraudulent change orders after the contract is awarded. Sometimes, project officials will go so far as to allow the favored bidder to draft the specifications.

Secret arrangement allowed bidder to "low ball" item that would later be dropped

A "representative" of a Project Implementation Unit (PIU) promised an international bidder for a US\$25 million agricultural testing laboratory that it would win the contract, if it would hire him as a "consultant" to help prepare its bid. The consulting fee would be 20 percent of the contract value, which he would share with project officials. Intrigued, the bidder wondered how he would be able to pay the bribe and still be the lowest qualified bidder. The representative said that the project would remove certain line items that called for expensive humidity and temperature control equipment once the contract had been awarded. The bidder could thus "low ball" this item in its bid, be the lowest bidder, and still have sufficient funds to pay the bribe. Additional contract amendments would be processed as necessary. The bidder agreed to the scheme, but lost the contract after the representative negotiated an even more lucrative deal with another bidder.

From World Bank hand book

²² International Competitive Bidding

²³ National Competitive Bidding

Biased evaluation criteria. Instituting biased evaluation and qualification criteria is another method used to steer contracts to a favored bidder. In one ICB contract for the procurement of computers, it was required that the goods must be delivered within three weeks of contract effectiveness. This requirement inappropriately excluded all international bidders since any overseas shipments would take longer than three weeks.

Unbalanced bidding. Under this scheme, project officials provide a favored bidder with inside information that is not made available to other bidders, for example, that one of several line items in a request for bids will not be called for after the contract has been awarded or that a certain low-cost solution will be acceptable. This information invariably gives the bidder an unfair advantage and by allowing the company to lower its price or otherwise tailor its bid to defeat its uninformed competitors. Project officials can facilitate the scheme by drafting vague specifications to further disadvantage competitors (see Case above).

Unbalanced bidding is also used to describe the practice of bidders quoting prices significantly below cost for some line items and prices significantly above cost for others, in the expectation that the Borrower will request many more items for which prices have been inflated. As a result, the lowest responsive bidder as determined at the time of contract award may not constitute the lowest-cost solution.



Red flags indicating unnecessary or inappropriate line items

Unnecessary items

- Specific line items in the BOQ that are not required to carry out the work and may be used for personal purposes by officials or later serve as bribes (e.g., excessive number of vehicles compared to project needs)

Inappropriate items

- Items creating a conflict of interest (e.g., payment for government officials and supervision consultants in the works contracts)

Red flags indicating rigged specifications

Tailored specifications

- Close similarity between the specifications and the winning bidder's product or services
- Specifications stipulate the use of a brand name without stating "or equivalent", contrary to Bank procurement rules
- Complaints from other bidders that the specifications match too closely those of a single competitor, or that a bidder prepared the contract specifications

Poor specifications

- Vague, ambiguous or incomplete specifications
- Specifications are significantly narrower or broader than in previous similar procurement actions

Few bids

- Only a few of the companies that purchase the bidding documents submit bids, especially if more than half drop out
- Relatively few companies submit bids, compared to prior similar tenders

- Fewer than the normal or expected number of potential bidders apply for prequalification



Red flags indicating unbalanced bidding

Removal of low priced line item

- Particular line items that are unreasonably low compared to market prices are later removed from the list of requirements under the contract

Price disparity

- Wide and inexplicable disparity in bid prices considering the type of works, goods or services being procured

Poor response to request for clarification

- Inadequate responses or clarifications by project officials to complaints from bidders about vague, ambiguous or incomplete specifications

Red flags indicating leaking of confidential information

- Inadequate bidding procedures, e.g., failure to enforce bidding deadlines, taking breaks during the opening of bids (to provide opportunity to share the content of certain bids and amend others), etc.
- A bid closely tracks the project's preferred solutions, budgets, estimates, etc.
- The winning bid is just under the next lowest bid
- A questionable "consultant" or "middleman" is involved in the bidding process
- Project officials and the favored bidder communicate (e.g., by email) or socialize during the bidding period

Short-Listing and Prequalification

Manipulation of the short-listing and prequalification process can be used to exclude qualified competitive bidders. Where prequalification is required under the Loan Agreement, prior review by Bank staff is mandatory for all documentation and proposals related to the prequalification process. The same holds true for the short-listing of firms for large consultancy contracts as specified in the Loan Agreement. The exclusion of qualified bidders could provide the means to ensure that only the preferred bidder, in whose bidding a government or project official may have a hidden interest, will submit a bid that fulfills the requirements.



Red flags in short-listing and prequalification

Questionable evaluation

- Unusual or unreasonable evaluation criteria
- One or more of the short-listed consultants or prequalified companies does not have the appropriate qualifications for the assignment
- Unreasonable prequalification requirements
- Short-listed firms do not have similar qualifications or there is a wide gap in qualifications
- Highly qualified firms have expressed interest and are not shortlisted

Red flags indicating hidden interest in a company

- Companies with P.O. Box addresses and mobile phone numbers (might be shell companies)
- Complaints that a project or government official owns or is otherwise linked to a supplier or contractor
- A project or government official is linked to a contractor or supplier through company registration information, family relationships, or reports in the market place
- A bidder or supplier is not listed on the Internet or in business or telephone directories
- A contractor's or supplier's address is a residence or a non-business location
- A contractor or supplier provides a wide variety of disparate goods and services at high prices

Red flags indicating exclusion of qualified bidders



Project officials can facilitate the selection of a favored bidder by improperly excluding other qualified bidders. This can take place at any time from the drafting of the bidding documents to the receipt of bids. The exclusion of qualified bidders often triggers complaints as the potential bidders invest time and money to prepare bids.

- Unreasonable pre- and post-qualification criteria (e.g., abnormally high annual turnover, liquidity reserves, or years of experience in the country)
- The Bid Evaluation Report (BER) provides no objective or poorly justified reasons for the rejection of certain bids (e.g., the disqualification for trivial or arbitrary reasons)
- Qualified contractors fail to bid indicating that the bidding process may be rigged
- Companies complain that officials refuse to make bidding documents available to potential bidders or to accept the submission of bids (e.g., complaints from potential bidders that they are coerced to refrain from bidding through subtle suggestions, firm statements, intimidation, or physical threats)

Pre-Bid Conference

Pre-bid conferences can be used to facilitate unbalanced bidding. Pre-bid conferences and site visits are often scheduled during the bidding period to clarify any ambiguities or discrepancies in the documents and to give potential bidders information on the bidding process and on the government's expectations. The pre-bid conference is usually followed by a clarification letter or modifications to the issued bidding documents which must then be sent to all the companies that bought the bidding documents. However, government officials may refrain from sharing timely, sufficient or correct information with all the bidders in order to give an unfair advantage to the favored bidder.

Red flags in pre-bid conference



Timing

- The pre-bid conference is scheduled too close to the bid submission date or yields changes to specifications without changes in deadline

Inadequate information

- Questions raised during the pre-bid conference are not addressed properly

Inadequate transparency

- Clarifications and modifications to the bidding documents resulting from the pre-bid conference are not shared with all the prospective bidders

Bid Submission

Corrupt project staff may accept late bids, tamper with bids, or exclude valid bids. Bids must be received by the agency prior to the date and time indicated in the bidding documents. Corrupt project staff may:

- (i) accept late bids submitted by favored bidders with inside information about prices from other bidders;
- (ii) tamper with the bids received, e.g., by discarding elements of the bid in order to disqualify the bidder; or
- (iii) exclude bidders by denying access to drop-off points or by failing to open bids

Red flags in bid submission



Late submission

- Not all bids are brought to the bid opening
- One or more of the submitted bids lack a time stamp

Tampering

- A bid was not in a sealed envelope
- Bids are not kept in a secure location with limited access

Bid manipulation

- The bid due date has been extended after some of the bids have been submitted
- Some or all bids are disqualified for simple errors

Exclusion

- Complaints from bidders that they were not allowed to submit bids
- A bid is “forgotten” in the safe

Bid Opening

A key risk in the bid opening phase is the manipulation of bid prices. The Borrower is required to conduct the bid opening in public at the address, date and time specified in the bidding documents. The bids should be opened immediately after the bid submission time. Various tactics may be used at that point to steer contracts to favored bidders, e.g., the price read aloud for the favored bidder does not match the actual bid price or a “new” price is later written into the bid.



Red flags in bid opening

- | | |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Submission | <ul style="list-style-type: none">• Bids are not opened in public |
| Tampering | <ul style="list-style-type: none">• The original bid form and price schedules or BOQ of all bids are not initialed or signed by the members of the bid opening committee• Pages are missing from one or more bids• Pages with a different typeset are included in the bid |
| Price manipulation | <ul style="list-style-type: none">• Changes to the bid prices and bid security list are handwritten• The applicable currency is not stated |
| Undue influence | <ul style="list-style-type: none">• Members of the BEC²⁴ are present or participating• The attendance sheet lacks original signatures of the company representatives supposedly present at the ceremony |

Bid Evaluation Committee

A BEC consisting of staff that have inadequate technical competencies could pose a corruption risk. BECs review and evaluate the submitted bids and recommend to which company the contract should be awarded. The BEC has wide discretion in excluding bidders and can abuse this authority as part of a corrupt scheme. On occasion, government officials obtain a position on the BEC to influence the decision making or collect bribes.



Red flags related to Bid Evaluation Committee

- | | |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Manipulation of BEC selection process | <ul style="list-style-type: none">• The BEC members do not have the necessary technical expertise to evaluate the submitted bids• The project uses a standing BEC regardless of what is being procured• The committee is too large or dominated by a single individual |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Bid Evaluation Report

Questionable evaluation and unusual bid patterns may emerge in the Bid Evaluation Report (BER). After the completion of the evaluation process, the implementing agency presents to the Bank its BER, which describes the results and the process by which the BEC has evaluated the bids received. The BER may include a number of indicators of bid rigging, e.g., questionable disqualifications and unusual bid patterns.

²⁴ Bid Evaluation Committee: It could be a prudent act to keep the BEC away from direct contact with the bidders. This will prevent any attempt by the bidders to influence the members of the BEC. However, financial rules/procurement rules may sometime explicitly require presence of BEC at the bid opening.



Red flags in Bid Evaluation Report

Violation of procurement rules

- The evaluation criteria differ from those issued in the bidding documents
- Inconsistencies exist between the BER and supporting documentation
- Improper or arbitrary evaluation sub-criteria or procedures are developed at the time of evaluation that differ from the issued bidding documents
- The BEC ignores the evaluation criteria in the issued bidding documents and develops its own method of evaluation
- The winning bidder is not on the short list or is not one of the prequalified companies

Questionable disqualifications

- The lowest priced bidder is declared unresponsive (for no apparent reason)
- A high number of bids is unresponsive
- Recommendations and disqualifications are poorly justified
- Bids are rejected because of allegedly missing components, such as catalogs and brochures for the goods offered
- Changes in the scoring of bids or arbitrary scoring of bids
- Pressure by project officials on BEC members to select a certain contractor
- Complaints from bidders about the evaluation process

Winning bid is poorly justified

- Technical specifications are copied from the bidding documents or are incomplete
- The manufacturer's authorization is missing, outdated or inadequate
- The bid does not match requirements (e.g., in terms of quantity, quality, qualifications)
- Pages of a bid are missing or not signed (when required)

Unusual bid patterns

- Same or similar telephone or facsimile numbers or address shared by bidders
- Unreasonably high bid prices by losing bidders for which there is no legitimate explanation and which cannot be attributed to an error
- Bid prices differ by a set percentage

Suspicious bidders

- Discrepancy between the company address and its telephone number area code

Fraudulent bids

What is a fraudulent bid?

Fraud is “any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” As used here, a “fraudulent bid” is a bid or proposal that contains knowingly or recklessly misleading information, submitted in order to gain an unfair advantage in the selection process.

What is the purpose of a fraudulent bid?

The evaluation of written submissions to bid solicitations is the foundation of a fair procurement system. A prominent risk to the procurement system is the undermining of the evaluation process by bidders providing false or misleading information in their bids and supporting documentation. When false information is relied upon to make procurement decisions, the impact is often manifested in poor quality of goods, works, and services, and failure to meet developmental objectives.

There are three “benefits” firms may seek to obtain. First, they may want to meet qualification criteria, e.g., by exaggerating financial statements and past performance. Second, they may simply seek to save costs by falsifying rather than buying a bid security. Third, bids may be submitted from a shell or entirely fictitious firm in order to hide its true ownership, e.g. by government officials. Consequently, frauds are made in relationship to the ownership of the bidder, its capacity, and the bid security:

Ownership. Concealed or misrepresented ownership of the bidder: in several cases, bids or proposals were submitted by firms that were secretly owned, in whole or in part, by government or project officials.

Financial capacity. Exaggerated financial resources of the bidder, such as inflated annual turnover or balance sheet amounts. Such bids often were accompanied by false or forged audit reports.

Technical capacity. Falsified or exaggerated information on the firm’s professional credentials or prior project or sales experience. Such bids often included forged or fraudulent end user certificates, manufacturer’s authorizations and product certifications.

Bid security. Bidders often submitted false or forged bid securities in order to save costs. These included securities that did not have a serial number, were not on the issuing bank’s letterhead, or were missing the required signatures.

How are fraudulent bids detected?

The following is an overview of the various indicators that should raise suspicions of possible fraud in the submission of bids with regard to ownership, financial capacity, technical capacity, and bid security. Typically, some additional due diligence through database or Internet searches and document checks could clarify such red flags.

Ownership

Fictitious companies are by definition fraudulent and may also serve as fronts for government officials. There are cases where investigations have uncovered submissions and supporting credentials of purely fictitious companies. The typical scheme involves corrupt government officials creating a fictitious company that will front as a “vehicle” to secure contract awards. Often, the fictitious—or ghost—company will subcontract work to lower paid and sometimes unqualified firms. The fictitious company may also utilize designated losers as subcontractors to deliver the work, thus indicating collusion.

Shell companies have no significant assets, staff or operational capacity. They pose a serious red flag as a bidder on Bank-financed contracts, because they often hide the interests of project or government officials, concealing a conflict of interest and opportunities for money laundering.

There are known instances where the company did not exist at all, or the Balance sheets did not meet the qualification criteria. The financial record submitted are signed by fictitious Chartered Accountants whose membership numbers, name and place of practice was found to be fake when enquired with the Institute of Chartered Accountants of India. The authenticity of both - the CA and the Company should be checked with the websites of ICAI and Registrar of Companies, Ministry of Corporate Affairs.



Red flags related to fictitious or shell companies

Fictitious or shell company

- Complaints from other bidders that a competitor is a shell company or unknown in the industry
- The bidder does not appear on the Internet, is not listed in telephone or business directories, or is located in a residence or non-business location
- CIN²⁵ of the Company not mentioned
- RoC (MCA-24) does not show the company as registered.

Financial capacity

The most common form of misrepresentation of bidders' financial data is the submission of falsified audit reports. The purpose is to make the bidder appear to be a larger well-established company supported by strong financial statements.



Red flags related to financial capacity

False or forged audit reports

- Audit reports are not signed or attested
- The audit firm/ CA does not exist
- The audit report is not in line with auditing standards

²⁵ Corporate Identification Number

False or exaggerated financial data

- The reported financial information is contradicted by Dun & Bradstreet or other reporting agencies.²⁶
- The reported financial information contradicts that provided under prior contracts

Technical capacity

Under the procurement procedures and as a part of the pre- and post-qualification process, companies are required to submit information on their past experience. Misrepresentations commonly relate to the volume of work within a specified period or years in business as indicated in end-user or performance certificates, manufacturer’s authorizations, product certifications and personal credentials.

End-user certificates. As a part of the post-qualification process, the client may request bidders to submit end-user certificates as a means of confirming past experience of the firms, document sales and service claims. INT has found that companies that cannot meet such requirements often resort to falsifying the requested documentation

Manufacturer’s authorizations. Bidders who are not the original manufacturer are required to submit manufacturer’s authorizations for the goods they offer. INT has found multiple instances of forged manufacturer’s authorizations. When these authorizations are falsified, it may increase the risk of product substitution.

Product certifications. Product certifications are used to ensure that the goods offered meet the performance requirements, as stated in the bidding documents. Some bidders falsify the required certifications, claiming to meet international or country standards, when in fact the product is of a lower quality.

Personnel credentials. Bidders and consultants are required to provide CVs of the personnel they are proposing to work on the contract. The personnel must have the minimum qualifications as stated in the issued bidding documents or RFP²⁷ respectively. Falsified credentials of key personnel, such as educational degrees, years of experience and language skills, or use of CVs without the individuals’ consent, are among the most common approaches used.



Red flags related to technical capacity

False or exaggerated experience

- Discrepancies between self-reported information and other information on the company’s website, in Dun & Bradstreet or from other sources

Fraudulent or forged certificates

- Certificates are not signed or dated
- Certificates are unprofessional in appearance
- Certificates appear to be copies rather than originals

²⁶ The Directorate General of Commercial Intelligence and Statistics (DGCI&S), Kolkata, under the Ministry of Commerce, Government of India

²⁷ Request for Proposals

- Multiple certificates on different dates, from varying sources, appearing to have identical signatures, formatting, etc.

Bid security

The Procurement Guidelines and procedures require the submission of bid securities as part of the bid package to ensure bidders are serious about their bids and will keep them valid for the required period. Bidders may forge bid securities for two purposes: (i) to meet qualification requirements of the bid solicitation; and (ii) to avoid the cost and inconvenience of purchasing the security.

Red flags related to bid security



Forged or fraudulent bid securities

- Securities do not have a serial number
- Securities are copies rather than originals
- Securities are not on original letterhead of the issuing bank and lack the required signatures

Bidder scans letterhead of commercial bank to forge bid securities

Due to concerns about widespread forgery of bids, Audit contacted all commercial banks that had issued bid securities, performance bonds, and advance payment guarantees to determine whether the documents presented by bidders were legitimate. Audit learned that a local bidder had not been issued any bid securities from the commercial bank as claimed in its bid.

Review of the bids established that the local company submitted three forged bid securities and two forged advance payment guarantees to secure five Bank-financed contracts valued at over US\$250,000. The company had scanned the commercial bank's letterhead and produced both sets of false documents to support its bids.

World Bank handbook

Fraudulent Implementation

What is fraudulent implementation?

The term “fraudulent implementation” denotes any fraud taking place after contract award in the physical implementation of works and delivery of goods and services. During the implementation phase, firms may deliberately fail to deliver the number and quality of goods, works or services stipulated in the contract in order to save costs and increase profits; abuse contract amendments to increase the scope or volume of work or to avoid competition; and claim or bill for additional goods, works or services not carried out or not needed. Such efforts are often facilitated by bribe payments to agency officials for the approval of work completion certificates and the processing of invoices.

What is the difference between poor and fraudulent implementation?

Fraudulent implementation occurs when firms knowingly or recklessly misrepresent their work as being delivered according to specifications. It is often found that poor implementation, as judged by substandard quality works, goods and services is an indicator of fraud. Operational staff have experienced that poor local capacity may result in quality problems as well. Hence, the question arises as to whether the implementation of a given contract is the result of poor capacity or fraud?

The implementation is deemed fraudulent when the contractor’s acts or omissions mislead or attempt to mislead the Government to obtain a financial or other benefit, or to avoid an obligation. For example, fraud occurs when a contractor represents that it constructed a building according to specifications, when in fact it used thinner reinforcing bars (to anchor and reinforce concrete and masonry in construction) and less cement than required by the contract specifications. By committing the fraud, the contractor obtains full payment while lowering his costs. Another example includes the delivery of old equipment presented as new or no delivery at all.

Impacts of fraudulent implementation

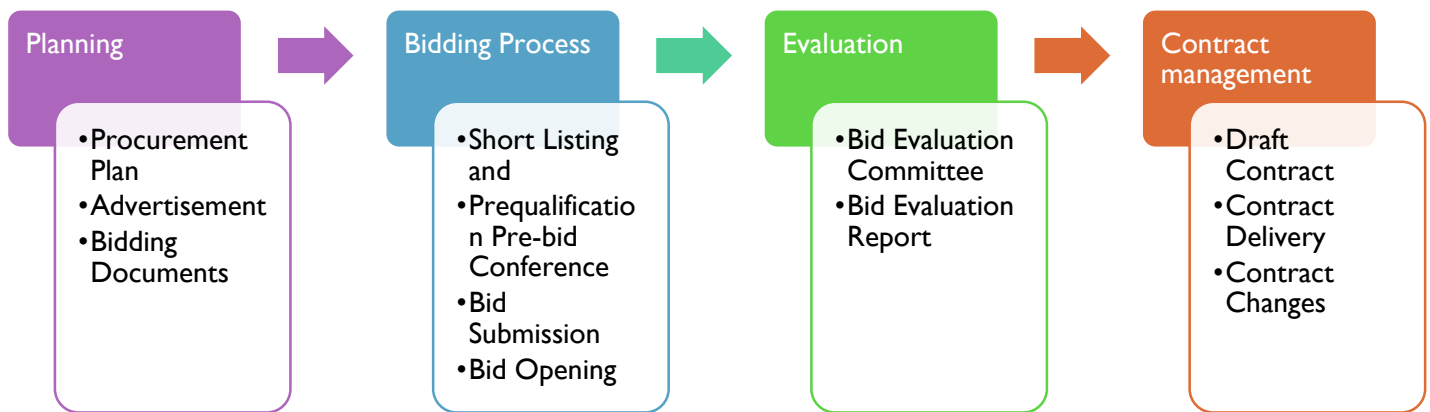
Implementation frauds may impact service delivery, health, and safety. The impact of false claims is mostly financial. However, failure to meet contractual specifications has a range of impacts, and since such schemes are often not discovered until after project implementation, remedies may be limited. For example, as the option to reconstruct a civil works project compromised by implementation fraud may be too expensive and not practical, project beneficiaries are forced to accept a product of substandard quality, unlikely to deliver its projected utility. Some examples of adverse impact on development outcomes that were found include:

Health. Health clinics were unusable due, inter alia, to poor sanitary installations and lack of electricity. Faulty equipment posed a health risk. A hole in the roof of a building resulted in the much needed medical equipment being ruined.

Transportation. A road disappeared after one rainy season due to poor drainage. Another road was not wide enough for two vehicles to pass at the same time, thus increasing the risk of traffic

accidents. Some shock absorbers were discovered missing from a bridge, which could have consequences for its lifespan and public safety.

How is fraudulent implementation detected?



Already discussed on page 56 to 63

Draft Contract

Questionable deviations from the bidding documents may signal fraud to benefit a contractor or government official. Under the Procurement Guidelines, usually the terms and conditions of the contract cannot, without prior approval of appropriate authority, materially differ from those on which bids or proposals were asked. All cases where deviations have been approved should be scrutinized, irrespective of whether such deviations have been approved by that competent authority. Deviations allowed must be well justified and only for facts which could not have been foreseen at the time of preparation of bid-documents with reasonable efforts.

Red flags in draft contract



Delays

- Long delays in contract award or negotiations

Questionable deviations from the bidding documents and bids/proposals

- Any changes to quality, quantity or specification both to goods and services in the contract deviating from the bidding document (TOR²⁸, technical specifications, key personnel, etc.)
- Price schedules are not the same as the winning bid
- Changes to contract type
- Changes to standard contract clauses (audit, remedies, damages, etc.)
- Methodology and Work Plan not attached to the contract
- Appendix lacks information about services and facilities provided by the client or are changed substantially from RFP draft contract

Unusual patterns

- Page numbers are missing from the contract or are not sequential
- Different typefaces used across clauses

²⁸ Terms of Reference

Contract Delivery

Failure to meet contract terms. Firms may deliberately fail to comply with contract requirements. The contractor will attempt to conceal such actions often by falsifying or forging supporting documentation and bill for the work as if it were done in accordance with specifications. In many cases, the contractors must bribe inspection or project personnel to accept the substandard goods or works, or supervision agents are coerced to approve substandard work. Listed below are common frauds committed by companies failing to meet their contractual obligations.



Red flags indicating failure to meet contract terms

Failures

- Discrepancies between inspection findings, test results, or contract specifications and the contractor's claims for payment
- Failed tests or inspections
- Complaints about poor quality from users
- Increased or accelerated product failures or repair costs

Inadequate supporting documentation

- Absent, inadequate or altered documentation submitted by the contractor to support billings
- Indications from the contractor's expenses, payroll, and other records that it did not incur costs necessary to comply with contract specifications. For example, the contractor did not:
 - purchase the quantity or quality of materials required under the contract
 - own or lease all the required equipment to carry out the work
 - have the necessary labor with required skills on the job site
- The contractor resists government inspection of its books and records in disregard of the government's audit rights

Delays

- Delayed start of works or the delivery of services beyond normal timeframes
- Long delays in implementation of the contract

Poor reputation of the firm

- The company is known to be a poor performer
- The company has exaggerated or falsified its prior experience

Product substitution. Contractors may substitute inferior and often cheaper products than those specified in the contract

Contractors substitute old computers for new

A component of an institution building project's Procurement Plan outlined the purchase of new computers with a certain memory capacity and processor speed. Documentation was presented by the Project Implementation Unit supporting the payment for the equipment as specified in the contract, and the invoice was processed. A concerned staff member of the task team had suspicions about the technical specifications of the computers and brought the matter to the attention of World Bank. During the investigation, officials attempted to prevent the inspection of the purchased equipment, claiming the computers were unavailable and temporarily "loaned out." However, when the physical inspection of the equipment finally took place, it was clear that the computers that had been supplied did not meet specifications. Further inspection revealed that the supplier was not an authorized dealer, but a small company specializing in the sale of refurbished equipment.

From World Bank Hand Book.

Deviation from specifications. Companies may seek to deviate from their contractual obligations. In one case, the TOR of a consulting firm required that it analyzes various cost estimation packages and recommends three options. The firm failed to do so, recommending only its own solution. In civil works, contractors may seek to reduce the thickness of a road surface, fail to sufficiently compact the soil, avoid vibrating the cement resulting in air pockets, thereby reducing the load bearing capacity and the width of the road.

Review finds narrow road without road surfacing

Audit visited this project site and discovered a road of sub-standard quality. The road was built 30 percent narrower than specifications and lacked road surfacing. Nevertheless, the contract was paid in full.



Substandard work. Failure to exercise key controls, lack of independent oversight, and bribery of the supervision agent are the main elements allowing for this type of scheme. An example was found during the physical inspection of newly built schools already showing signs of wear and tear, and which had been handed over without doors and windows. In other cases investigated,

consultants submitted poor quality studies and reports that could not be used by the project without significant revisions.

Failure to deliver. Investigations have uncovered cases where contractors had left project sites with civil works incomplete. In other cases, the training, equipment, and consultant reports had not been delivered at all. Case 16 illustrates how a significant part of equipment under a health project was either not delivered or not installed as per the contract requirements.

False statements. Contractors and consultants can submit a wide variety of false statements. INT has found false statements such as false time sheets for a company's employees (to support inflated invoices) or false claims that soil conditions were more difficult than those anticipated at the time of bidding (to justify improper contract amendments). Consultant firms also may submit CVs of staff not on their payrolls or substitute junior staff for the senior staff presented in their bid proposals.

Red flags indicating false statements

Discrepancies in supporting documentation

- Discrepancies between statements and supporting documentation or site visits
- Inconsistent, missing or apparently altered supporting documentation
- Discrepancies between statements and the results of background or due diligence checks

False claims and invoices. This type of fraud frequently occurs in projects with weak financial control systems whereby the project officials receive kickbacks for approving or processing falsified claims and invoices. Alternatively, the contractor may recognize the weak control environment through its previous interactions with the implementing agency and—acting alone—submit duplicate, inflated invoices or unsubstantiated claims with the intention of defrauding the project.

Red flags indicating false claims and invoices

False invoices

- Not receiving any report for invoiced goods or services
- Invoiced goods or services cannot be located in the inventory or otherwise accounted for
- No purchase order exists for the invoiced goods or services

Inflated invoices

- Invoice prices, amounts, item descriptions or terms exceed or do not match:
 - contract or purchase order terms
 - receiving records
 - inventory or usage records
 - invoice and supporting documents

Duplicate invoices

- Multiple payments in the same time period:

- for the same or similar amount to the same or related vendors
- for the same invoice or purchase order
- for the same goods, works, or services
- Multiple invoices with the same:
 - description of goods or services
 - amount and vendor
 - invoice number and date
 - purchase order number
- Total amount paid to the contractor exceeds invoiced or purchase order amounts

Other

- Discrepancies between contract or purchase order, receiving documents, and invoices
- Contractor submits inadequate, copied or apparently altered supporting documents with the invoices
- Discrepancies between the contractor's invoices and supporting documents
- Total payments to a contractor exceed the total purchase order or contract amounts

Consortium submits US \$150,000 in false claims

World Bank was requested by the task team of a forestry project to investigate possible fraudulent invoices for consulting services provided by a consortium of companies. The investigation found that one company submitted US\$150,000 in false expense claims on behalf of the consortium for hotel charges, photocopying and report production, equipment purchases, training, and air fares. The company admitted to making the false claims in order to pay kickbacks to project officials, BEC members, and ministry officials. These payments were considered unavoidable and normal business practices by the companies in order to continue winning contracts in the future.

From World Bank Hand Book.

Contract Changes

Abuse of contract amendments and change orders. Contract amendments and change orders usually represent legitimate modifications to the signed contracts. However, they can be abused. A common scheme involves collusion between a favored contractor and project officials to award a contract to the contractor at a low price, followed promptly by one or a series of change orders (often just below the change order no-objection threshold of 15 percent of the original contract value).



Red flags indicating contract amendment and change order abuse

Contractor

- Change in the name and legal status of the firm
- Numerous or questionable change orders for a specific contractor that are approved by the same project official

Output

- Pattern of change orders just below the threshold for prior review
- Changes in the scope of the contract and required outputs
- Changes in technical specifications
- Substantial changes in the TOR
- Changes to the original design and BOQ
- Increase in contract value (e.g., unit costs)
- Reductions in the quantity of items to be delivered without a commensurate reduction in disbursements
- Substitution of materials and equipment

Role of Audit in Relation to Cases of Fraud and Corruption: CAG's Standing Order

(A brief summary is discussed below, please refer to the Standing Order on Role of Audit in Relation to Cases of Fraud and Corruption issued by the Department in September 2006)

Examination of system for detection and prevention of fraud and corruption are an integral part of a regularity audits and also of performance audits, when it forms one of the audit (sub) objectives (*para 1.1*). Fraud examination is a part of the normal auditing procedures and includes being alert for situations, control weaknesses, inadequacies in record keeping, errors and unusual transactions or results, which could be indicative of fraud, corruption, improper expenditure or lack of probity; and focusing audit strategy on areas and operations prone to fraud and corruption by developing effective high risk indicators for fraud (*para 2*).

Fraud may involve manipulation, falsification or alteration of records or documents; misappropriation/ misapplication of assets; suppression or omission of the effects of transactions from records or documents; recording of transaction without substances; and misapplication of accounting policies (*para 3.6*). The mandate of Government Audit is broader than solely that of financial statement auditor and includes responsibility for verification of regularity and performance. Hence, the auditor should be aware of the possibility of fraud not only in the preparation and presentation of financial statements but other areas covered by regularity (compliance) and performance audits as well (*para 3.7*).

Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence. Professional skepticism requires an ongoing questioning of whether the information and audit evidence obtained suggests the existence of fraud having a material effect on audit findings/ opinion (*para 12.1*). The field offices should carry out an independent risk assessment and prioritize their audit planning accordingly. This should include consideration of any information received from the public or media on suspected cases of fraud and corruption. The audit plans should focus on high risk areas. Such high risk areas include Revenue receipts, cash management, expenditure on AC bills, financial statements, operating information etc. (*para 13.1 and 13.8*).

Though audit cannot insure against frauds, the possibility of their occurrence should be kept in mind while preparing for and conducting audit, by maintaining an attitude of professional skepticism (*para 13.2*). The auditor may keep in view that when a fraud is conducted there is a deliberate effort to conceal the facts and distract the auditor (*para 14.3*).

Fraud detection measures need to be built in the audit procedures, so that during the audit, the auditor can highlight a transaction for a possible fraud or identify such consistent system failures, which can lead to a fraud (*para 15.2 and 15.3*).

Case Studies

In this chapter, synopsis of some of the key findings of various CAG's reports are mentioned. The findings could be corroborated with our discussions thus far. These are not the only findings that indicate that from time to time Government officials have wittingly or unwittingly fallen victim to various forms of manipulations in award of contracts and execution of works or procurement of materials.

However, for detail findings, please refer to the original reports of the Comptroller and Auditor General of India.

Acquisition of Helicopters for VVIPs

Background

The Comptroller and Auditor General (CAG) submitted a report on the acquisition of helicopters for Very Very Important Persons (VVIPs) on August 13, 2013. The audit sought to examine the process of acquisition of VVIP helicopters and its compliance with the Defence Procurement Procedure (DPP), the prescribed procedure for procurement in the defence services. The Indian Air Force maintains a fleet of aircrafts and helicopters for providing air transportation to VVIPs. In 1999, it proposed replacing its helicopters with more advanced versions, given their operational limitations.



In 2010, the Ministry of Defence concluded a contract with M/s AgustaWestland International Ltd., UK for the procurement of 12 helicopters (of the AW-101 model) at a total cost of Rs 3727 crore. The audit examines compliance of this particular procurement with the DPP.

Key findings and recommendations

Key findings and recommendations of the CAG are detailed below:

- ✓ The initial Request for Proposal (RFP) issued by the Ministry of Defence in 2002 mandated an altitude requirement of 6000 metres. Only one helicopter, the EC 225 of Eurocopter met this requirement. The EH-101 helicopter (later renamed AW-101) of AgustaWestland did not meet this requirement.
- ✓ However, the first RFP was cancelled due to the emergence of a single vendor situation. In the revised RFP in 2006, the altitude requirement was reduced to 4,500 metres, and a

cabin height requirement of 1.8 metres was introduced, making the AW-101 eligible, and the EC 225 ineligible.

- ✓ The CAG report points out that the lowering of the altitude requirement was against the operational requirement of the procured helicopters, especially in many areas of the north and north east of India. In addition, the single vendor situation remained even after lowering the altitude requirement, because of which the AW-101 of AgustaWestland was selected.
- ✓ The revised Service Qualitative Requirements (SQRs) in 2006 made competition more restrictive instead of making the procurement procedures more broad based to increase competition. The fresh RFP with revised SQRs was issued to only 6 vendors as opposed to 11 in 2002.
- ✓ The Field Evaluation Trial (FET) of the AW-101 was conducted on representative helicopters and not the actual helicopter. The AW-101 was still at the development stage at the time of the FET.
- ✓ Although the 2006 RFP had laid down the necessity of carrying out the field evaluations in India, they were conducted abroad.
- ✓ Given the low utilisation levels of the existing fleet of helicopters, the Ministry was not justified in procuring four additional helicopters for VVIPs.
- ✓ The IAF continued to face operational difficulties with existing helicopters as the acquisition of the new helicopters took more than 10 years.
- ✓ The cost benchmarked by the Contract Negotiation Committee was much higher than the offered price, allowing no room for negotiation.
- ✓ The DPP, 2006 makes an offset clause mandatory in all contracts above Rs 300 crore. Certain offsets were allowed which were not compliant with the provisions of the DPP.

The CAG report concludes that the process of acquisition from framing of quality requirements to the conclusion of the contract differed from established procurement procedures.

Ultra Mega Power Projects under Special Purpose Vehicles

Background

The Comptroller and Auditor General (CAG) released a Report on Performance Audit of Ultra Mega Power Projects under Special Purpose Vehicles on August 17, 2012. Given the magnitude of expansion the power sector requires, the Government of India (GoI) decided in November 2005 to develop 16 Ultra Mega Power Projects (UMPPs). The projected cost of each UMPP of 4000 MW was Rs 16,000 to 20,000 crore. Ministry of Power (MOP) designated the Power Finance Corporation Limited (PFC) as the nodal agency for



development of UMPPs. Four UMPPs have been awarded, viz. Sasan in Madhya Pradesh, Mundra in Gujarat, Krishnapatnam in Andhra Pradesh and Tilaiya in Jharkhand.

For the selection of Project Developers, a two stage bidding process was adopted:

- Request for Qualification (RFQ) - Bidders satisfying minimum technical and financial criteria were short listed.
- Request for Proposal (RFP) – Bidders were required to quote the tariff for 25 years from the Scheduled Commercial Operation Date of the concerned UMPPs.

Findings and Recommendations

The findings of the CAG were as follows:

(a) Appointment of bid process management consultant: The principle of equity in public procurement was not followed while awarding consultancy assignments to Ernst &Young (E&Y).

(b) Identification of Project Developers: The audit observed that the process of identifying the Project Developers suffered from inadequacies such as:

- Minimum criteria for prequalification of bidders like net worth were on the lower side considering the size of the projects.
- Key conditions of the Standard Bidding Documents were diluted, citing the need for increasing competition or providing comfort to the Developers.
- Bid Process Management Consultants E&Y as well as the various Evaluation Committees failed to adequately verify admissibility of experience claimed by Reliance Power Limited (RPL).

(c) Excess Acquisition of Land:

- The Central Electricity Authority finalised its report on land requirements for thermal plants in December 2007. The audit noticed that land for some UMPPs was in excess when compared to the norms in that report.
- The Developers were allowed to retain the excess land instead of utilising the same for other 'Public purposes'.

(d) Financial Benefit to Project Developer

- The Empowered Group of Ministers (EGOM) recommended that power generated by utilizing incremental coal from captive coal blocks of Sasan UMPP would be sold through tariff based competitive bidding. But RPL was granted permission by Ministry of Coal to use the surplus coal in the power plant it was setting up in Chitrangi. RPL had bid for the Chitrangi project citing independent fuel arrangement.
- The clauses of the coal allocation letter do not explicitly state that the central government would indeed grant permission to the Developer to use the surplus coal in their other

projects. Hence, the grant of this permission to RPL was detrimental to other bidders like the Tata Power Company Limited.

- This resulted in financial benefit of Rs 29,033 crore with a net present value of Rs 11,852 crore to the Project Developer.
- Fuel cost is an important aspect of commercial consideration in arriving at the tariff. The permission to use surplus coal in other projects of the bidder after award of the contract based on acceptance of the lowest tariff vitiated the sanctity of the bidding process. This resulted in post bid concessions to RPL having significant financial implication.
- To ensure fair play and transparency of the bidding process for future Developers to derive comfort in Government action, the allocation of the third coal block (Chhatrasai) should be reviewed. According to the audit, given that RPL had committed that they would be able to source 20 million tonne from the two blocks, there would be adequate coal to feed the Sasan UMPP.

Procurement of Stores and Machinery in Ordnance Factories

In June 2009 Ministry of Defence informed the Comptroller & Auditor General of India that consequent to a case having been registered by Central Bureau of Investigation (CBI) against Shri Sudipta Ghosh, former Director General Ordnance Factories involving serious charges of corrupt practices, CBI had requested the Ministry to examine whether there were irregularities in the procurement cases finalized during the tenure of the former Director General. Since a proper analysis of the procurement cases would require in-depth examination and considerable professional skills, Ministry requested CAG to undertake a special audit of all the procurement contracts during the period by a suitable team of officers from the Indian Audit & Accounts Department.

The Key Audit findings are:

Nalanda Factory

Transfer of Technology

Cabinet Committee on Security accorded sanction in November 2001 for setting up facilities at Nalanda in Bihar at an estimated cost of Rs 941.13 crore to manufacture two lakh Bi Modular Charge System (BMCS) per year. The approval included transfer of technology (TOT) from Denel, a South African firm at a cost of Rs 60.51 crore. The technology was to be acquired along with procurement of 4 lakh modules to meet the Army's immediate requirement from Somchem. The estimated cost of the factory was revised to Rs 2161 crore in January 2009. The overall progress of Nalanda factory has been dismal despite an expenditure of Rs 786 crore till March 2010.

Contract agreement for transfer of technology was signed between OFB and Denel on 15 March 2002. It envisaged supply and delivery of TOT documents which comprised Product specifications including detailed dimensional drawings and designs, Quality and Inspection procedures, Process descriptions and Production methods in respect of raw materials, intermediate products and final

products. The Seller's warranty and the Performance Bank Guarantee provided by Denel have expired on 31 March 2010.

Establishment of the Factory.

The factory comprises three plants, two of which are for producing Nitro Cellulose and Nitro Glycerin, which are to provide inputs to the main plant to produce BMCS. It was decided that the main BMCS plant would be procured as a package. The plants for the manufacturing of primary ingredients Nitro-glycerin (NG) and Nitro-cellulose (NC) being standard plants were to be procured separately on turn-key basis. The project of setting up of the factory was effectively converted into three independent and uncoordinated procurement decisions.

This was a fundamentally flawed strategy which led to the situation where contracts for two feeder plants have been awarded but the main BMCS plant which will use output of these plants is nowhere in sight.

The factory has also been mired in controversies. All dealings with the technology provider Denel was put on hold in June 2005 due to allegations of corruption. By that time, however, Denel supplied all the required documents and received payments for them. Further work on factory was also put on hold from June 2005 to July 2006, which required retendering for all the plants, which led to sharp hike in price.

The contract with IMI Israel for the main BMCS plant has now been mired in controversies and corruption charges and has put the future of the Nalanda plant in jeopardy.

Contract of the Main BMCS Plant to IMI Israel

Tender Enquiry for BMCS plant was issued first in March 2004. The price bid was opened in October 2004. IMI Israel emerged as the L-1 firm at a cost of Rs 571.71 crore. The matter did not progress since project was kept in abeyance by Ministry in June 2005.

After the project was restarted in July 2006, IMI was called for negotiation meeting in August 2006 and asked to reduce the price as assessed by a committee constituted by OFB. IMI however insisted on a price increase from original 2004 price of Rs 571.71 crore to Rs 654.79 crore. OFB decided to issue global tender enquiry to generate more competition.

Fresh Tenders were issued in February 2007. However, hardly any fresh competition was generated as a result of the fresh tenders. Against five companies to whom tenders were issued, only three responded within time. One of them, DMP Italy refused to sign the Integrity Pact and to pay the earnest money deposit of Rs 3 crore. As a result only two companies namely IMI, Israel and Simmel Difesa, Italy remained in consideration. The price bid was opened on 28 January 2008. The offer of IMI Israel was the lowest at Rs 1090.83 crore and the next higher quote of Simmel Difesa was at Rs 1885 crore.

During the earlier negotiations, the escalation demanded by the IMI was 15 per cent over a period of two years from July 2004 to August 2006. Against the fresh tender, the escalation was 67 per

cent over a period of one year. The scope of supply in the quotes in March 2004, September 2006 and February 2007 remained the same.

Internal assessment indicated that the rate quoted by IMI was very high

The internal assessment of OFB also indicated that compared to the quotation of IMI Israel in 2004, the rates quoted by IMI in January 2008 was on a high side. By adding escalation factors to the estimates quoted in October 2004, the base price came to Rs 800.34 crore as against Rs 1050.01 crore quoted by IMI in the fresh tender. Another estimate carried out by University Institute of Chemical Technology Mumbai arrived at a cost of Rs 832.22 crore. For the Single Base Propellant Plant, Ordnance Factory Bhandara calculated the basic cost at Rs 269.1 crore as against the cost of Rs 747.23 crore demanded by IMI.

Cost Negotiations Committee did not recommend any firm negotiated price for procurement of BMCS Plant

Against this background, MOD constituted a Cost Negotiation Committee (CNC) on 27 March 2008 with DGOF as Chairman. The basic objective of the CNC was to negotiate price and other commercial terms and conditions. However, CNC did not take any firm decision regarding the final negotiated cost of the plant.

Cabinet approval to the procurement of the BMCS Plant was assumed as implicit in the approval of the cost revision of the project

The Competent Financial Authority for approving the contract of the BMCS plant was Cabinet Committee on Security (CCS). Ministry of Defence in December 2008 put up a note to Cabinet seeking approval for revision of the estimated cost of project from Rs 941.13 crore to Rs 2160.51 crore. The “approval para” of the note to the Cabinet did not refer to the BMCS plant at all and sought only the approval of the revised costs of the project. In the note, the facts of the increased cost of the BMCS plant and IMI’s offer of reduction of only US \$ 3 million were mentioned as contributing reasons to the escalation of the costs. The lack of resolution on the issue in the CNC was not mentioned. Similarly, the issue of the price variation formula was not brought to the notice of the Cabinet. CCS approved the revision of cost of the project.

Ministry took this approval as “implicit approval” by the CCS of the procurement of BMCS plant and conveyed to OFB on 5 February 2009 sanction for the revised cost of project. OFB in a fax on 6 February 2009 requested to authorize it to conclude contract for BMCS plant “at the rate negotiated and approved by the Competent Financial Authority.” Ministry on 10 February 2009 informed OFB that the revision of the cost of the project as a whole has been approved by the competent authority and OFB may conclude the contract for BMCS plant “at the approved and negotiated cost.” Neither the Ministry nor the OFB clarified in their correspondence at any time as to what exactly was the “negotiated and approved cost.”

Deputy Director General New Capital in the OFB in his note dated 10 February 2009 which was endorsed and approved by the former DG, clearly stated that “from the minutes of the meeting of CNC dated 22 July 2008, it is seen that the CNC did not make any conclusive decision or recommendation to MOD with regard to acceptance of the negotiated price. Also the terms for advance payment of 20 per cent demanded by IMI in their offer were not specifically referred to MOD for approval (being beyond OFB powers), it may be presumed that MOD has considered the entire issue covering all aspects in its totality and conveyed their sanction accordingly.” The note was endorsed by the former DG.

Interestingly, Ministry took the stand that CNC was aware of such an advance demanded and therefore should be treated as integral part of the CNC proceedings. Seeking a separate approval for the payment of advance beyond admissible limit was considered a “redundant exercise”. In no meeting, did CNC consider the issue of recommending the payment of advance.

Thus based on the “presumption” regarding the negotiated cost having been approved by the Competent Financial Authority, which in this case was the Cabinet, OFB concluded the contract for the BMCS plant IMI Israel in March 2009 at the total cost of Rs 1175 crore. It also paid an advance of Rs 174 crore to IMI in March 2009 which would remain idle as transactions with IMI were put on hold in June 2009 by Ministry.

The main audit findings relating to the contract are:

- a) In order to execute the contract of main BMCS plant for Nalanda factory, the normal procedures were significantly undermined;
- b) OFB’s refusal to accept the revised offer of IMI of Rs 654.79 crore and the consequent decision to retender to generate more competition was ill advised. Both OFB and Ministry were aware that the number of firms capable and willing to supply BMCS plant were very few;
- c) OFB and Ministry executed the contract with IMI despite the steep increase in costs from the previous quotations ignoring available internal assessments that the hike was unreasonable;
- d) Ministry took the doubtful stand that the approval of the Cabinet to revision of costs of the entire project amounted to “implicit approval” of the procurement of main BMCS plant;
- e) Ministry misled Ministry of Finance stating that no escalation is foreseen knowing fully well that IMI has insisted on price variation formula for the Indian portion of the project;
- f) Ministry and OFB between themselves obfuscated the issue of “negotiated and approved cost.” While Ministry did not hesitate to even put up before Cabinet that such price has been negotiated by CNC, OFB took the stand that CNC did not recommend any “negotiated and approved” cost to the Ministry; and
- g) Ministry allowed payment of 20 per cent advance arguing that CNC was aware of the issue and therefore it should be treated as integral part of the CNC considerations on

the whole issue. OFB took the stand that this was not recommended by the CNC. In fact, the issue indeed was never considered by the CNC;

In the case of all three plants, decisions were taken to retender to generate more competition. In all three cases, the retendered cost was much higher than the negotiated price.

Dealings between Singapore Technologies and OFB on procurement of Close Quarter Battle Carbines by Ministry of Home Affairs

On 12 Jun 2008, OFB received a communication from the Singapore Technologies Kinetics (STK) addressed to the former DG. In this, a meeting in September 2007 was referred to in which discussions had taken place regarding collaboration between OFB and STK on offset arrangements for selected programmes of the Ministry. It was stated in that letter that STK had then received from Ministry, RFPs for Close Quarter Battle Carbines and ammunition and also other items like Light weight Howitzer and Towed Gun system. STK requested OFB to offer the draft terms and conditions for provision of offset.

In the backdrop of the above, a meeting took place on 8 July 2008 between former DG and other officials of OFB Headquarters and the representatives of STK at OFB. STK informed that Ministry of Home Affairs (MHA) was likely to make outright purchase of CQB carbine and they would like to participate in the same. Chairman / OFB stated that the subject matter can be taken up with MHA stating that "an offset agreement has been signed between OFB and STK and the latter has developed the carbine using Indian components so that the indigenization process becomes faster for supply to MHA".

Falsification of facts by OFB before Ministry of Home Affairs

The decision to "take up" the matter with the Joint Secretary, Ministry of Home Affairs stating that "an offset agreement has been signed between OFB and STK and that STK has developed the Carbine by using Indian Components so that the indigenization process becomes faster for supply to MHA" was incorrect and amounted to falsification of facts. The fact was that as on that date, neither any offset agreement had been signed nor had STK developed any carbine "by using Indian Components". As subsequent developments would indicate, this was the beginning of a web of falsifications and conspiracy that surrounded the deal between STK and OFB.

Though it was further decided in that meeting that the above can be taken up with the Ministry of Home Affairs only when the Carbine with Indian Component is developed and test fired in India in the presence of OFB, subsequent actions of the OFB belied that decision and confirmed the intention to mislead the MHA.

Close on the heels of this meeting, another meeting took place between MHA and officers from the OFB Headquarters on 24 July 2008. MHA expressed the need for acquiring 5.56 mm Carbine on most urgent basis as the plan for modernization of police forces was coming to an end on 31 March 2010. It was pointed out that 5.56mm carbine provided by OFB earlier for carrying out

trial evaluation had failed. OFB officials informed that fresh trials for ammunition would take place soon but OFB's representative also suggested that they can supply for trial 5 Nos Carbine developed by "one Singapore firm" with which OFB "will have Transfer of Technology (TOT) arrangements".

In an internal note on 29 July 2008, on a proposal whether OFB should provide the carbines offered by STK for trials by MHA, it was opined by Member (Ammunition & Explosives) and Member (Weapons, Vehicles & Equipments) that the carbines should not be offered to MHA since they had not been evaluated by the Ordnance Factories. The former DG on that note directed to call STK for a meeting.

The meeting was convened on 11 August 2008. In Phase I of the meeting which was internal, it was decided to offer to MHA the STK carbine having minimum 50 per cent work share with OFB along with OFB's own AMOGH carbine. In the Phase II of the meeting in which STK participated, it was decided that six carbines should be provided by STK out of which five should be offered to the MHA. STK assured that they would send two carbines immediately by 25 August which could be used by Ordnance Factories for their trials. To facilitate import, it was decided to sign the end user agreement and non-disclosure agreement "today (11 August 2008) itself".

The Performance of the Carbine differed widely in trials by Small Arms Factory Kanpur and by paramilitary forces

Arrangements were then made for carrying out trials of the two STK SAR 21 MMS²⁹ carbines at SAF³⁰ Kanpur on 15 September 2008. Trials were conducted at 50 m and 200m range beyond which facilities were not available. Ability to fire with One Hand grip was found "Not suitable". Sustained firing was conducted where 720 rounds were fired in 10 minutes. Overheating was noticed at various points. At the end of the firing, safety lever became loose and could not be rectified on the spot. At the drop test at 5 metres, major misalignment problem was observed in one machine and it became nonfunctional. In case of the other machine, minor problems cropped up which, however could be rectified on the spot. Effect of dust as in a desert like condition was not evaluated.

MHA trials were held from 17 November to 21 November 2008 at NSG premises at Manesar. Prior to the trials STK apprehended that there might be technical complications if their carbine is subjected to reliability test specifications as spelt out in the MHA's trial directive and requested for safety certificate from OFB. This would be required as the carbines were being offered as OFB's carbines that would be produced through a TOT arrangements. OFB did not hesitate to provide the required safety certificate and other certificates for recoil forces, noise levels etc. that were issued by DDG/R&D based on the certificate issued by STK. Without formal collaboration with STK, issuing safety certificates by OFB to facilitate trial by MHA was incorrect

²⁹ Singapore Assault Rifles Modular Mounting System

³⁰ Small Arms Factory, Kanpur

as the carbine was fully imported and it had failed on several parameters when tested in SAF Kanpur.

On several parameters, in which SAR 21 was found deficient in SAF Kanpur, NSG trials found the carbine completely satisfactory. The drop test was done at the height of 5 feet as against 5 meter tested at SAF. While SAF complained of smoke, NSG trial did not find any trace of smoke. NSG also found that the weapon could easily be handled and fired with one hand.

DDG/R&D who was nominated as OFB's representative at MHA trial brought out that large numbers of stoppages were observed during the firing of OFB's own 'AMOGH' carbine of Small Arms Factory being fielded by OFB. These stoppages were primarily on the account of defective feeding of ammunition by the magazine. DDG opined that the gun has otherwise performed satisfactorily as far as accuracy, consistency and other parameters are concerned. He further observed that *"Poor performance of SAF Carbine during trials of NSG could have been avoided, had SAF taken more care in preparing the Weapons Systems before sending to NSG."*

In a meeting in the MHA on 18 February 2009 regarding procurement of Carbines, OFB committed that they can supply the first batch of 2627 carbines on 1.9.2009, 18369 by 31.3.2010 at the same monthly rate and the total quantity by 28 February 2011. BSF opted to procure the weapon from the OFB. CRPF also agreed with that.

It was only after this commitment, the issue to undertake productionization of STK make Carbine was deliberated in the Board meeting held on 26 February 2009 which passed the following resolution:

"Production of 5.56 mm Carbine of Singapore Technology with 45mm chamber length would be undertaken subject to (a) MOD's approval of collaborative instrument with Singapore Technologies and (b) MHA's commitment to procure economically viable quantities from Ordnance Factories. The background of selection of Singapore Technologies for obtaining technology for production of 5.56 mm carbine inter-alia bringing out that no RFP was issued to identify the collaborator would be spelt out to MOD at the time of sending the collaborative instrument for their approval."

The cost of STK carbine was likely to be more than six times the cost of in-house developed carbine.

The case could not proceed further as the transaction with STK was put on hold in June 2009 by MOD after STK had indirectly been mentioned in the FIR registered by the CBI against former DGOF.

On the day OFB committed supply of carbines to MHA, OFB did not have any production arrangements with STK for production of these in India. There was no authorization from the Ministry to commence any production arrangements. OFB by committing the supply to the MHA, created a fait accompli situation to facilitate STK to supply the carbines piggybacking Ordnance

Factories. While MHA could avoid floating the normal tendering procedures by procuring it from OFB, the fact is that OFB in absence of any co production arrangements would have supplied carbines produced by STK. The process amounted to a sophisticated connivance by OFB and STK to sell STK carbines to MHA without going through the approved laid down procedures.

Assertion of OFB before MHA that it will have TOT arrangements was not based on facts and was intended to mislead the MHA. Even the rudimentary terms and conditions of TOT and co-production arrangements had not been contemplated at that stage. OFB falsely presented before MHA the SAR 21 MMS as OFB's offer, with production and TOT arrangements with STK. The officials from the MHA and the Para Military forces accepted OFB's offer without any further examination or investigation. Such lack of diligence was unbecoming of senior management dealing with such procurements. Officials from the MHA never enquired about the production facilities knowing fully well that SAR 21 MMS is not an indigenous carbine.

Ministry of Defence was not even aware of these developments. They came to know only after the receipt of two anonymous complaints in February 2009 through MHA and initiated disciplinary action thereafter.

Dealings between Defence Corporation Russia and OFB

In a similar case, Ministry of Defence issued two RFPs for the procurement of Light Bullet Proof Vehicles (BPV) and Light Strike Vehicle (LSV) with accessories in June 2008 and August 2008 respectively. Against the above backdrop, Defence Corporation Russia (CDR) showed interest in a letter dated 8 October 2008 in formulating strategic alliance with OFB for joint production of BPV and LSV in India. OFB invited CDR on 13 October 2008 to a meeting on 23 October 2008. The decision for collaboration with CDR for participation on BPV was taken in the OFB Meeting dated 31 October 2008. Thus, the whole exercise was concluded in one month at an astonishing speed. Two Collaboration Agreements (CAs) were signed on 15 April 2009 between CDR and OFB to enter into strategic long-term collaboration for the production and supply of the LSV and BPV to OFB.

Such collaborative arrangements with CDR were entered into by the OFB without exploring the market. The work share arrangements also did not favour OFB in any way. Work-share in respect of LSV was distributed between CDR and OFB as 84.87 per cent and 15.13 per cent respectively. Similarly, in respect of BPVs, the share of CDR and OFB was distributed as 64.92 per cent and 35.08 per cent respectively. It included all the above low technology items. OFB was not to get any benefit from these CAs from technology point of view as all the major components were to be supplied by CDR and only to be assembled by OFB. On the other hand, CDR would supply their product at the cost fixed by them and without entering into any competitive bids. It was noted that there was no oversight by the Ministry of Defence to ensure that such actions are scrutinized at different levels.

Procurement by Factories

Procurement through Open Tender Enquiry and Limited Tender Enquiry

Ordnance Factories normally resort to two channels to procure stores. Limited Tender Enquiry (LTE) is issued to established suppliers who are registered with the factory concerned. Open tender enquiry (OTE) is open to any supplier. OTE channel is designed to encourage new suppliers to participate in the Ordnance Factory procurement process and thus to expand the base of suppliers to the Ordnance Factories. However, established suppliers are not barred from quoting against open tender enquiries. For materials which are proprietary or are not available widely in the open market, Single Tender Enquiry (STE) is issued.

According to Paragraph 4.6.1.1 of MMPM³¹, 80 per cent of annual ordering quantity is to be procured through Limited Tender Enquiry (LTE) from established sources and 20 per cent quantity is to be procured through Open Tender Enquiry (OTE) with wider publicity for source development.

Scrutiny in audit indicated that LTE channel continued to be the dominant channel of procurement and a miniscule part of procurement was carried out through OTE channel. Out of the 18 Factories selected, the information on the OTE / LTE/ STE was available in the database of seven Factories only. The data of OTE in these seven Factories during the last three years was meagre and varied from 0.07 per cent to 1.91 per cent only.

The system of open tender enquiry has been so distorted that in Ordnance Factory Khamaria the response to the OTE ranged from Re. 0.07 (7 paise) to Rs. 3700.00. Two companies namely Hyderabad Precision Co and Mech Components Ltd, both located in Hyderabad, quoted 7 paise only. Both these companies were otherwise established suppliers. The last purchase rate of the item was Rs. 4401.90 per set through LTE and the lowest offer of Re 0.07 per set was obviously “freak”. Despite this the factory placed in September 2008 supply orders for the item on these two firms for 4289 and 4288 sets respectively at an absurd price of 7 paise. Needless to say, no supply of the item has been received from either of the firms. Incidentally, both the companies shared the same fax number for another tender enquiry in Ammunition Factory, Kirkee.

Tell-tale evidence of collusion of suppliers ignored

As per Rule 142 (ii) of General Financial Rules (GFR), credentials of the suppliers should be carefully verified before registration of the suppliers. Further as per Rule 142 (iv) of the GFR, performance and conduct of every registered supplier is to be watched by the Department. The suppliers are liable to be removed from the list of approved suppliers if they make any false declaration to the Government or for any ground, which in the opinion of the Government is not in public interest.

Scrutiny of the procurement files of the past three years indicated that the Ordnance Factories registered and placed orders on a large number of companies which shared the same telephone

³¹ Material Management Procurement Manual is OFB's Procurement Manual.

numbers, or fax numbers or registered addresses. 23 such cases are listed in Annexure II. Such cases indicate on one hand, lack of basic verification of the credentials of the companies and lack of application of mind by the authorities in the Factories on the other. It is apparent that many shadow firms were operating and cornering supply orders from various Factories. The factory authorities however did not take into account even the most obvious evidence of such malpractices which enabled the suppliers to manipulate the prices several individual cases of such collusion are narrated in the report. (Please refer to the original report at: <http://www.cag.gov.in/content/report-no-15-2010-performance-audit-procurement-stores-and-machinery-ordnance-factories>).

Cases of clear cartelization ignored by the Factory Officials

During audit at least 108 cases were seen in different Factories, where firms from different cities have quoted the same price for same item. All were through limited tender channel. Details are at Annexure III. As an example, in the first case in Annexure III, in Ordnance Factory Khamaria, five firms from Mumbai, Delhi, Pune, Gurgaon and NOIDA quoted exactly the price of Rs 398 per item for ball insert. Supply order was placed on all firms and the tendered quantity was equally distributed.

In order to stop cartelization, OFB on 18 July 2007 introduced a new measure. It prescribed that L2 and L3 tenderers should also be allowed to supply provided they accept the counteroffer of the rate quoted by L1 at a ratio of 50:30:20. However the measure did little to improve the situation as the suppliers quoted the same rate and all became L1 as a result.

One of the reasons why firms registered themselves under different names was the usual practice of Ordnance Factories to distribute the ordered quantity among different suppliers if they were found to have quoted same rate or accepted, being L₂ or L₃, a counter offer of the L₁ rate. Such firms who operate under different names, in the event of equal distribution of tendered quantity will get a larger share through a sister concern or a ghost firm. In one extreme case, Ordnance Clothing Factory Shahjahanpur placed supply orders on 13 suppliers at the same rate by distributing the quantity of Yarn Woolen 450 Tex Type Natural Grey.

Unwillingness of TPC³²s headed by the Head of the factory and comprising other senior factory officials to take action on blatant cases of price manipulation by suppliers and in some cases their active connivance to favour suppliers, absence of independent assessment of the rates quoted and treating the last purchase rate as the only benchmark coupled with the practice of distributing the ordered quantity among all suppliers reinforced and encouraged the practice of cartelization even more.

It also came to notice that prices quoted under OTE were significantly lower than the prices under LTE. The opinion among the factory officials was that suppliers quoted cheaper rates to grab the contracts as the first step to enter into the supply chain of the Ordnance Factories.

³² Tender Purchase Committees

While this may be partially true, many cases were seen in which established suppliers also participated in open tender enquiries and quoted cheaper rates. The belief also presupposes that suppliers will be making losses to make entry through the open tender channel which may not be wholly true. Cases were seen that suppliers through shadow firms also were able to suppress effective competition.

In none of the cases mentioned in Annexure III, where cartelization was prima facie evident, Ministry or OFB or the concerned factory made any enquiries or took any effective action. On the other hand, such a situation was allowed to continue in almost all the Factories. In factory after factory the same firms responded to various tender enquiries both through LTE and OTE channel and manipulated the prices, as would be evident from Chapter VII of the Report. In many cases, in replies to audit observations the Factories justified the action by the fact that they were following the provisions of the MMPM. No initiative was taken by Ministry, OFB or the factory officials to stop the brazen manipulation of the system.

Price Discovery process in procurement

To achieve the best price in competitive tendering, open and competitive tendering is the *sine qua non*. Dependence on the limited tender, cartelization, lack of independent assessment of the reasonableness of pricing and very high delegation among different levels of officials in an environment which has little internal control have created a situation in the Ordnance Factories in which the possibility of a fair price through competitive bidding was remote. During audit, a large number of cases were seen where the prices have been manipulated and the officials had not taken any effective action to ameliorate the situation. This has emerged as the fundamental flaw in the system.

MMPM lay down the elaborate guidelines to determine the reasonableness of prices for procurement in case of competitive tendering where two or more suppliers are competing independently to secure a contract. The Manual envisages that the reasonability of price proposed has to be established by taking into account the competition observed from the responses from the trade, last purchase price, estimated value, database maintained on costs based on past contracts entered into, market price wherever available, changes in the indices of various raw materials, electricity, wholesale price index and statutory changes in the wage rates etc.

MMPM also required that the reasonability of price be examined by resorting to Cost analysis in situations where there is wide variance over the Last Purchase Price not explained by corresponding changes in the indices.

Further, as per MMPM, OFB was to make arrangement for data base on past contracts showing details of the items procured, their essential specifications, unit rate, quantity, total value, mode of tender enquiry, number of tenders received, number of tenders considered acceptable, reasons for exclusion of overlooked tenders, un-negotiated rates of L-1, and contract rates were to be maintained to help in ascertaining reasonability of price of future procurements. The data in respect of supply orders in excess of Rs 20 lakh was to be made available in OFB website for

information of all Factories. Further, as per the Manual, database maintained on costs based on concluded contracts, prices of products available through market should also be used to assess reasonableness of prices offered.

It was noticed during audit that neither the Factories nor OFB had maintained any database as per OFB Manual. The Factories do not have any database of the estimated cost of the stores procured or the prices of the product available through market. The various TPCs determined the reasonability of the rates with reference to the last paid rate (LPR) only.

In most of the Factories, LPR was the main index to assess price reasonableness. There was no cost expert either at the OFB level or at the factory level. In one or two Factories rudimentary efforts were made in a few cases to independently arrive at an estimate.

Contract Management

Rule 158 of the General Financial Rules stipulates that “to ensure due performance of the contract, performance security is to be obtained from the successful bidder awarded the contract. Performance security is to be obtained from every successful bidder irrespective of its registration status. Performance Security should be for an amount of 5-10 per cent of the value of the contract.” It further stipulates that “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.”

It was noticed in audit that in many cases the Factories did not take security deposit. Similarly, cases were noticed about non-inclusion of option clause which favoured the suppliers. In HVF Avadi, Audit noticed that option clause was manipulated to favour R K Machine Tools.

Internal Control

Internal Audit and Vigilance

It was seen that internal control mechanisms both at the Board and Factory level were allowed to collapse and become dysfunctional. The Chief Internal Auditor of the Factories in a response to a query in audit on the functioning of the internal audit mechanism admitted that the internal audit teams could not raise objections against Ordnance factory organizations, as they functioned under their administrative and functional control of the executive. He stated in November 2009 that during 2006-07 to 2008- 09, the internal audit mechanism failed to uncover any financial irregularities both at factory level and at the level of OFB.

The malaise was however deeper and structural. Between 2006-07 and 2008-09, the Internal Audit was under the control of OFB. The Chief Internal Auditor (Factories) was under direct functional and administrative control of the Member (Finance) of OFB. He functioned with the help of five Regional Internal Audit Officers (RIAO) who were primarily responsible for functions relating to finance and accounts and only additionally, Internal Audit. The Material Planning Sheet5 was required to be approved by the Local Audit Officer (LAO), who was also the accounts officer in the factory. The RIAO were under functional and administrative control of the respective

GMs/Sr. GMs of the Ordnance Factories. Such an arrangement violated the fundamental principles of independence of internal audit. The internal audit wing did not develop any Manual, checklists or guidelines for conduct of such audit and functioned in an ad hoc manner.

The dysfunctional state of internal audit was reflected in the fact that as of March 2010, a total of 2137 audit objections were still outstanding. At the OFB level, there is a Networking Committee chaired by one DDG to monitor the internal audit objections. Only two meetings of the Committee were held in two years. As of November 2009, the last meeting was held in March 2008. At the Factory level, even though there was an ad-hoc Committee in each factory under the Chairmanship of Sr GM/GM and these committees were required to meet quarterly, such meetings were infrequent. In the past 15 quarters from quarter ending December 2005 to June 2009 in 39 Factories, 585 such meetings should have been held. Only 120 meetings were held. 80 per cent of the meetings required to be held were never held. In some of the Factories, from 2005-06 to date, only one or two meetings had taken place.

As with Internal Audit, in case of Internal Vigilance also, the dysfunctional state of vigilance was reflected in the fact that 15 Factories submitted to the Board 'Nil' reports on 18 vigilance sub topics continuously for the past three years. Even these 'Nil' reports were usually delayed by six to nine months indicating lack of attention to the reports by the CVO and the OFB. Three Factories did not even submit these reports.

Delegation of financial powers without Internal Audit and Vigilance

It is in the backdrop of collapsing internal control that Ministry of Defence in December 2006 issued orders significantly enhancing the financial powers of the Ordnance Factory Board. The objective of such enhancement of powers was to enhance autonomy and increase the efficiency of the Ordnance Factories in its day-to-day functioning. Following this, OFB on 11th April 2007 enhanced financial powers of various functionaries in Ordnance Factories for procurement of stores, plant and machineries. For procurement of stores through open tender or limited tender which is the main source of procurement of stores in the Factories, the power of GM was enhanced from Rs 1 crore to Rs 20 crore. For procurement of Plants and Machinery through limited tender or open tender in replacement of BER³³ Plants and Machinery, against projects sanctioned by government or to improve production under NC³⁴, the powers of General Managers were enhanced from Rs 10-25 lakh to Rs 20 crore.

Tender Purchase Committee exercising functions of Competent Financial Authority

Procurement through Tender Purchase Committees in the Factories represented a structural problem of decision making in the Factories. TPCs performed the functions of the CFA³⁵. While such TPCs were headed by the CFA, the procurement cases were not considered separately on files based on the recommendations of the TPCs and no separate sanction order was issued for

³³ Beyond Economic Repair

³⁴ New Capital

³⁵ Competent Financial Authority

these procurements. While it promoted collegiate decision making, the accountability of the individual CFA could not be established in this process.

Suggested readings and Bibliography:

1. Study on Government Procurement: Study for Evidence Based Competition Advocacy, Devika Malhotra IIT Delhi
2. Government Procurement in India: Domestic Regulations & Trade Prospects, CUTS
3. Combating Corruption in Indian Public Procurement- some exploratory case studies, Bodhibrata Nag, Associate Professor, Indian Institute of Management Calcutta
4. The interim report by the one- man committee headed by Shri Shreedharan for delegating tendering and commercial powers to General Managers
5. OECD Guidelines for Fighting Bid Rigging in Public Procurement.
6. OECD Detecting Bid Rigging in Public Procurement.
7. OECD Designing Tenders to Reduce Bid Rigging.
8. Fraud and Corruption Awareness Handbook, World Bank Group
9. Report No. 15 of 2010 - Performance Audit of Procurement of Stores and Machinery in Ordnance Factories
10. Arrowsmith, S. and R. Anderson (2011), 'The WTO Regime on Government Procurement: Challenges and Reforms', Cambridge Press, New York, USA
11. Sandeep Verma, No 'buy India' clauses for us, thank you, Financial Express, May 05, 2012
12. Support for Improvement in Governance and Management (2011) "Brief I: Public Procurement in EU: Legislative Framework, Basic Principles and Institutions", OECD
13. Sandeep Verma, 'Domestic Preferences in Public Procurement', the Business Standard, December 26, 2011
14. Working papers of the WTO and academia and the presentations made by the Deputy Director General WTO, Harsh Vardhan Singh and Robert D Anderson, Head, Government Procurement Wing of WTO Secretariat. Anderson, R et al (2012) 'The Government Contractor' Public Law and Legal Theory Paper No. 2012-7, of the George Washington University Law School, Volume 54, Number 1.
15. Sandeep Verma, 'Competitive Negotiations in Government Procurement', Business Standard, January 16, 2012.
16. Panel refuses to go with Vinod Dhall committee's recommendations Vikas Dhoot, ET Bureau Jul 19, 2011
17. Sahaydachny, S (2005) (Draft) 'Electronic Reverse Auctions',
18. PRS legislative briefs

19. Make in India: Turning vision into Reality, Boston Consultancy Group and Confederation of Indian Industry.
20. Make in India: Impact on Public Procurement, Santhanam Krishnan
21. Gordon, D (2006) 'Constructing a Bid Protest Process' Public Law and Legal Theory Paper No.2000, the George Washington University School, Washington DC, USA.
22. Sandeep Verma: Why procurement reform in Indian states is tricky, February 8, 2014
23. Anti-competitive practices in government contracts, Sandeep Verma, February 27, 2012.
24. Distortions of Competition Generated by the Public (Power) Buyer: A Perceived Gap in EC Competition Law and Proposals to Bridge It The University of Oxford, Center for Competition Law and Policy.
25. A Study Of The Role Of Public Procurement – Can Public Procurement Make Society Better? Jeong-Wook Choi Professor of School of Business University at Seoul, Korea
26. UK Public Procurement Law Digest Vol.1 (2008 & 2009) & UK Public Procurement Law Digest Vol.2 (2010 & 2011)
27. Taj Mahal Ka Tender Revisiting Cost-Reimbursement Contracting for Public Infrastructure Projects, Sandeep Verma
28. <http://www.buylawsindia.com/>
29. India Country Procurement Assessment Report, Report No. 27859-IN, World Bank
30. Constructing a Bid Protest Process: The Choices That Every Procurement Challenge System Must Make, Daniel I. Gordon. SSRN-id 892781
31. Public Procurement Systems: Unpacking Stakeholder Aspirations and Expectations Steven L. Schooner, Daniel I. Gordon, and Jessica L. Clark. SSRN-id 1133234
32. Desiderata: Objectives for a System of Government Contract Law Professor Steven L. Schooner: SSRN-id 304620
33. Legal Safeguards of 'Government Contracts' in India: A Critique. By Navajyoti Samanta SSRN-id1439753
34. Embedding the "Make In India" Vision within India's Public Procurement Frameworks Sandeep Verma, SSRN-id=2543204
35. India: Probity in Public Procurement- Transparency, objectivity and competition in Public Private Partnership projects in line with the United Nations Convention against Corruption. UNODC

Please note: Statutes, Case laws and Government Manuals, committee reports are mentioned in the research paper itself and not included in this section. They have been quoted against the material where mentioned.

Annexure

I Similarity in Documentation submitted

V. K. BROTHERS
VKB

105/696, Chamanganj,
Bhannana Purwa,
Kanpur - 208 003
Phone : 0512-2546449

Date: 21/3/06

TO,
The General Manager,
Ordnance Parachute Factory,
KANPUR - 208 004.

SUB.: T/E No.20050749/PROV DUE ON 23.03.2006 FOR SUPPLY OF UNIVERSAL MEMBER .

Dear Sir,
We have the pleasure to participate against your subject tender enquiry with our lowest rate , terms and conditions as under :-

ITEM NO. Description of Stores	QTY	RATE
01. UNIVERSAL MEMBER CONFIRMING TO TENDER SPECIFICATION.	29275 NOS.	RS. 158.00* PER NO. (Chk. under P.F. 8/11/3 Kanpur)

TERMS & CONDITIONS

- TERMS OF DELIVERY : FREE DELIVERY TO O.P.F. KANPUR.
- DATE OF DELIVERY : Commencement within 15 days & Completion by 02 months from the date of receipt of firm and final Order complete in all respects.

Cont...2

For V. K. BROTHERS
Proprietor

MANUFACTURERS & EXPORTER OF
Cotton Tape, Niwar, Belts, Ropes, Webbing, Hat Equipment, Tents, All Types of Bags, Dosulte Sheeting, Fabric Cotton, Razal, Coat Combat, All Type of Uniform, Leather Items etc.

A. V. R. ENTERPRISES
(An ISO certified company)
Approved Govt. Contractors, Suppliers & Exporter of all types of textile items

Date: 21/3/06

TO,
The General Manager,
Ordnance Parachute Factory,
KANPUR - 208 004.

SUB.: T/E No.20050749/PROV DUE ON 23.03.2006 FOR SUPPLY OF UNIVERSAL MEMBER .

Dear Sir,
We have the pleasure to participate against your subject tender enquiry with our lowest rate , terms and conditions as under :-

ITEM NO. Description of Stores	QTY	RATE
01. UNIVERSAL MEMBER CONFIRMING TO TENDER SPECIFICATION.	29275 NOS.	RS. 150.00* PER NO. (Chk. under P.F. 8/11/3 Kanpur)

TERMS & CONDITIONS

- TERMS OF DELIVERY : FREE DELIVERY TO O.P.F. KANPUR.
- DATE OF DELIVERY : Commencement within 15 days & Completion by 02 months from the date of receipt of firm and final Order complete in all respects.

Cont...2

For A.V.R. Enterprises
Partner

Visit at : www.standargroupofcompanies.com • E-mail : Contact@standargroupofcompanies.com
Factory & Administrative Off. : D-23, Park Industrial Estate, Site No.1, Kanpur-208 022, U.P. (INDIA)
Phone : (H.O.) : 2691152, 2691070, Fax : 0512-2692497, Gram : TEX-HOUSE

STANDARD NIWAR MILLS
(An ISO certified company)
Approved Govt. Contractors, Suppliers & Exporter of all types of Textile items

Date: 21/3/06

TO,
The General Manager,
Ordnance Parachute Factory,
KANPUR - 208 004.

SUB.: T/E No.20050749/PROV DUE ON 23.03.2006 FOR SUPPLY OF UNIVERSAL MEMBER .

Dear Sir,
We have the pleasure to participate against your subject tender enquiry with our lowest rate , terms and conditions as under :-

ITEM NO. Description of Stores	QTY	RATE
01. UNIVERSAL MEMBER CONFIRMING TO TENDER SPECIFICATION.	29275 NOS.	RS. 158.00* PER NO. (Chk. under P.F. 8/11/3 Kanpur)

TERMS & CONDITIONS

- TERMS OF DELIVERY : FREE DELIVERY TO O.P.F. KANPUR.
- DATE OF DELIVERY : Commencement within 01 days & Completion by 03 months from the date of receipt of firm and final Order complete in all respects.

Cont...2

For STANDARD NIWAR MILLS
Partner

Visit at : www.standargroupofcompanies.com • E-mail : Contact@standargroupofcompanies.com
Regd. Off. & Factory : D-24, Park Industrial Estate, Site No.1, Kanpur - 208 022, U.P. (INDIA)
Phone : (H.O.) : 2691152, 2691070, Fax : 0512-2692497, Gram : NEWAR-HOUSE

II Evidence of Collusion among different firms

Name of the factory	TE No & date	Name of the firm	Location of the firm	Fax No	Telephone Numbers	E-mail id/ address	Remarks
AFK	No 800995	M/s Mukesh industries	Ludhiana	0181-2459777 & 2225715.			Identical handwriting in both quotations
	Opened on 07.04.09	M/s KEW	Ludhiana	0181-2459777 & 2225715			-do-
AFK	No 800117 dt 03.06.09	M/ Hyderabad Precision	Hyderabad	0140-23079342			
		M/S Mech componenets	Hyderabad	0140-23079342			
AFK	No 701217 dt 25.01.08	M/s Raj Industrial Corporation	New Delhi	011-25724732			
		M/s Singhal Industries	New Delhi	011-25724732			
AFK & HEF	No 701185 dt 11.01.08t 11.01.08	M/s Alcast	Ranchi	065-2275867	9431115661		Identical handwriting in both quotation
	AD 28000015 dt 26.02.08	M/s Precision Engg works	Ranchi	065-2275867	9431115661		-do-
AFK	800813 dt 16.01.09	M/s Asha Industries	Kolkata	0133-24002098			TE has been dispatched at the same time from same post office
		M/s Tirupati Industries	Kolkata	0133-24002098			
HEF	TR No 29000021 dt 11.02.09	M/S Vijay Roadlines	Pune	020-27111003 & 27111005			
		M/S Gauri Road-lines	Pune	020-27111003 & 27111005			
AFK	800868 dt 30.01.09	M/s Veekay	Mumbai	022-26237710			
		M/s Seth	Mumbai				
		M/s Chowdhury Packagers	Nagpur				Management accepted that the office address of the both firm is same.
OFA		M/s Safety Packagers	Nagpur				
		Aabha Packaging	Badlapur				Management agreed that both the firm are owned by same firm.
		Shanti Packaging	Kalyan				
HEF	29000276 dt 1.04.09	M/s Supreme packages	Mumbai				Both the companies transmitted the quotations through same FAX .
		M/s Super pack	Mumbai				

OCFS	2007000313 dt 1.03.08	M/s RSM Woolen Mills	Panipat		0180-2630340		Identical text in both the quotations
		M/s Mittal Woolen & Cotton Mills	Panipat		0180-2630340		
		M/s Prestige Spinners (P) Ltd.	Ludhiana	0161-2609926	0161-2609921		Identical address of Head Office- 186, Industrial Area A, Ludhiana
		M/s Punjab Wool Syndicate	Ludhiana	0161-2609926	0161-2609921		
		M/s AAA Spinners	Panipat	0180-2650717	0180-3292271	jains- puneet@yahoo.co.i n	Identical address of Head Office- E-33, Industrial Area, Panipat
		M/s Siddhartha Woolen Mills	Panipat	0180-2650717	0180-3292271	jains- puneet@yahoo.co.i n	
		M/s Raghav International	Ludhiana	0161-743457			Identical address of Works Office- 32, Netaji Nagar, Ludhiana
		M/s Maheshwari Woolen Mills	Ludhiana	0161-2743457			
		M/s Vikas Udyog	Ludhiana		0161-5069865		
		M/s Geeta Woolen Mills	Ludhiana		0161-5069865		
OEFC	20070807/PV/1 806 dt 25.08.07	M/s PJ Technocrat	Jabalpur		2432256 (Residence)		
		M/s General Erectors & Fabricators Corporation	Jabalpur		2432256 (Residence)		
	20080183/PV/4 142 dt 10.06.08	M/s Standard Niwar Mill	Kanpur	0512-2692497	2691070 & 2546449	D-24, Panki Industrial Estate	All three quotations with identical text and handwriting
		M/s AVR Enterprise	Kanpur	0512-2692497	2691070 & 2546449	D-23, Panki Industrial Estate	
		M/s VK Brothers	Kanpur		2691070	D-21, Panki Industrial Estate	

Name of the factory	TE No & date	Name of the firm	Location of the firm	Fax No	Telephone Numbers	E-mail id/ address	Remarks
	20061502/PV/2616 dt 01.03.2007	M/s D.Rajamanickam & Co.	Bodinayakanur (Tamilnadu)	04546-280328	04546-280288	1/202, Pudur South Street	(i) Identical text in quotations and handwriting including signatures
		M/s P.Duraiappa Nadar Sons	Bodinayakanur (Tamilnadu)	04546-280328	04546-280288	1/201, Pudur South Street	(ii) Identical date seal on quotations (iii) Final Quotation mentioned on top of quotations
		M/s Saravanan Industries	Theni (Tamilnadu)		04546-280288	57, Cumbum Road	
		M/s Sri Duraiappa Ginning Factory	Theni (Tamilnadu)	04546-280328	04546-280288	57, Cumbum Road	
	20061065/PV/1400 dt 04.01.2007	M/s Jupiter Rubber Pvt. Ltd.	Kolkata	24980359	24455039 (Office) & 30955760 (Factory)	Block-A, House N.6, New Alipore (Office) & Bibirhat Road, P.O. Rashpunji, South 24 Paraganas (Factory)	Identical text in quotations and handwriting including signatures
		M/s Poly Fill Industries	Kolkata	24980359	24455039 (Office) & 32955760 (Factory)	Block-A, House N.6, New Alipore (Office) & Bibirhat Road, P.O. Rashpunji, South 24 Paraganas (Factory)	
OPF	20071010/PROV/TENDER dt 15.03.08	M/s B.K.R.Engineers	Ludhiana	0161-5045270	0161-2537432 & 0161-5012765		Identical text in quotations and office telephone nos. of M/s BKR Engineers were mentioned as FAX no. by other two firms
		M/s Daya Industries	Ludhiana	0161-5012765	0161-2542848		
		M/s Rattan Industries (India)	Ludhiana	0161-2537432			
		M/s Samraat Enterprises	Kanpur				Identical format and text used in quotations and identical handwriting
		M/s Quality Engineering	Kanpur				

Name of the factory	TE No & date	Name of the firm	Location of the firm	Fax No	Telephone Numbers	E-mail id/ address	Remarks
	20060609/PRO V dt 19.12.06	M/s Oriental Synthetic & Rayon Mills Pvt.Ltd.	Thane	27615616	27630071, 27681140 & 27683332	D-64, T.T.C. MIDC Turbhe	Identical format and text used in quotations
		M/s Paithan Silk Mills	Thane	27615616	27630071, 27681140 & 27683332	D-64, T.T.C. Industrial Area, Turbhe	
	20050840/PRO V dt 29.03.06	M/s Bansal Wool Traders	Ludhiana	0161-2511226	0161-2510771	sanjaybansal_bsml@yahoo.co.in (E-mail ID)	Identical format and text used in quotations
		M/s Bansal Spinning Mills Ltd.	Ludhiana	0161-2511226	0161-2510771	sanjaybansal_bsml@yahoo.co.in (E-mail ID)	
		M/s KKK Mills	Ludhiana	2674793	2451236 (Res) & 2552852 (Res)	145, Industrial Area A (City Office) & B-40, Focal Point, Phase V (Works Office)	Identical format and text used in quotations
		M/s Vikas Udyog	Ludhiana	2674793	2451236 (Res)	B-40/1, Focal Point, Phase V (Works Office)	
		M/s Geeta Woolen Mills	Ludhiana		2552852 (Res)	145, Industrial Area A (City Office) & B-40/2, Focal Point, Phase V (Works Office)	
SAF	2603001906 dt 29.01.09	M/s Sandeep Metal Crafts (P) Ltd.	Nagpur	(07104)236860	(07104)237878 & 235165	info@sandeepmetalcraft.com (E-mail ID of office) and 09823064146 (Mobile No. of Office) as per VRRF	As per VRRF Shri Avinash Deshpande, Director was proprietor but he signed for M/s Priya Preci-Comp Pvt Ltd
		M/s Priya Preci- Comp Pvt.Ltd.	Nagpur	(07104)235483	(07104)235017 & 234811 and 09823037009 (Mobile No.)	shyam@sandeepmetalcraft.com (E-mail ID of Proprietor) and 09823064146 (Mobile No. of Proprietor) as per VRRF	As per VRRF Shri Shyam Agrawal,MD was proprietor but the quotation was signed by Shri Avinash Deshpande, Director
		M/s Shanti Arms- Tech Pvt.Ltd.	Nagpur	(07104)235410	(07104)235047		
OFC	B20092130/PV/ 2009-10 dt 06.08.09	M/s Oxeeco Technologies Pvt.Ltd.	Hyderabad	(040)27203742		B-6/4, I.D.A.,UPPAL	Identical FAX nos. and identical handwriting in both the quotations
		M/s Spanex Products	Hyderabad	(040)27203742		B-6/1, I.D.A.,UPPAL	

Name of the factory	TE No & date	Name of the firm	Location of the firm	Fax No	Telephone Numbers	E-mail id/ address	Remarks
	20072476/LP-5/PV-B dt 20.03.08	M/s R.K. International	Kanpur	(0512)2232913			Identical FAX nos. and identical handwriting in both the quotations
		M/s V.S. Chemical Trading Co.	Kanpur	(0512)2232913			
	A20070373/LP-21/PV(A)/2007-08 dt 05.12.07	M/s M.B.Traders	Kanpur				Identical text and handwriting in both the quotations
		M/s Indo Synthetics	Kanpur				
OPF	20050749 dated 2.3.2006	M/S Standard Niwar Mill	Kanpur	0512 -2692497			1. same FAX No.at different location
		M/S FVR Enterprises M/s. V.K. Brothers	Kanpur	0512-2692497			1. OPF issued Tender document to M/S Standard Niwar Mills & M/S VK Brothers i.e.105/696,Chamanganj Bhannanpurva 2. All three firm use same word format
VFJ	08/3778/MM/AVFJ due on Dec. 2008	Simplex Auto Industries	Jabalpur	0761-4032995	2423944 4032992	Simplex Estate Nagpur Road Jabalpur	Tender Opening attended by Shri J.B. Singh for both firms
		Simplex Metalica	Jabalpur	0761-4032995	2423944 4032992	Simplex Estate Nagpur Road Jabalpur	
VFJ	08/3779/MM/AVFJ dated Dec. 2008	Simplex Auto Industries	Jabalpur	0761-4032995	2423944 4032992	Simplex Estate Nagpur Road Jabalpur	Tender Opening attended by Shri J.B. Singh for both firms
		Simplex Metalica	Jabalpur	0761-4032995	2423944 4032992	Simplex Estate Nagpur Road Jabalpur	

II Statement showing the details wherein firms quoted Identical Rates.

Sl No	TE No. & Dt	Item Name	Name & Address of the firms	Rate quoted (In Rupees)	S.O.No	Date	Value (Rs. In lakh)
			Ordnance Factory Khamaria				
1	05-CST -0909 Dt 02-01-06	Ball Insert	M/s. Manisha Rubber Mumbai	398.00	LP064034	6/3/2006	25.85
			M/s Kamal Rubplast Delhi	398.00	LP064035	6/3/2006	25.85
			M/s Rohit Rubber Pune	398.00	LP064036	6/3/2006	25.85
			M/s V.K.Rubplast Gurgaon	398.00	LP064037	6/3/2006	25.85
			M/s Vikas Extrusion Noida	398.00	LP064038	6/3/2006	25.85
2	06CST-0358 dt. 29/07/2006	Ball Insert Front	M/s. Manisha Rubber Mumbai	417.00	LP064093	9/9/2006	18.06
			M/s Kamal Rubplast Delhi	417.00	LP064092	9/9/2006	18.06
			M/s Rohit Rubber Pune	417.00	LP064094	9/9/2006	18.06
			M/s V.K.Rubplast Gurgaon	417.00	LP064095	9/9/2006	18.06
			M/s Vikas Extrusion NOIDA	417.00	LP064096	9/9/2006	18.06
3	06CST-0839 dt. 16/12/2006	Base Plate 7.8 mm /8.5 mm	M/s Castiplast Pvt. Kolkata	70.00	LP064169	1/8/2007	26.87
			M/s Galaxi EPOXY CAST Pune.	70.00	LP064170	1/8/2007	26.87
			M/S D.K. Insulation, Bhopal	70.00	LP064171	1/8/2007	26.87
4	06CST-0933 dt. 03/01/2007	Slipping Ring	M/s V.K.Rubplast Gurgaon	43.80	LP064194	2/6/2007	17.94
			M/s Rohit Rubber Product Pune	43.80	LP064196	2/6/2007	17.94
			M/s Paramount Plastic New Delhi	43.80	LP064195	2/6/2007	17.94
			M/s Mechanical Seals & pack Mumbai	43.80	LP064197	2/6/2007	17.94
5	06CST-0840 dt. 16/12/2006	Base Plate	M/s Castiplast Pvt. Kolkata	70.00	LP064211	2/18/2007	37.31
			M/s Galaxi EPOXY CAST Pune.	70.00	LP064213	2/18/2007	37.31
			M/s D.K.Insulation Bhopal	70.00	LP064212	2/18/2007	37.31
6	06CST-1002 dt. 18/12/2006	Fuse Empty for 23mm Schilka	M/s Sandeep Metalcraft Nagpur	423.00	LP064225	3/10/2007	356.13
			M/s Vxl Technologies Faridabad	423.00	LP064226	3/13/2007	356.13
			M/s Meen components, Hyderabad	423.00			356.13
			M/s Hyderabad Precision Hyderabad	423.00	LP064227	3/13/2007	356.13
			M/s Naveen Tools Calcutta	423.00			356.13
			M/s Ashoka Industries Calcutta	423.00	LP064228		356.13
7	06CST-0844 dt. 20/12/2006	Carrier Ammunition IA	M/s Paramount Plastic New Delhi	318.00	LP064238	3/15/2007	22.51
			M/s Bihani Udyog, Jabalpur	318.00	LP064239	3/15/2007	22.51
			M/s Seth & Co. Mumbai	318.00	LP064240	3/15/2007	22.51
			M/s Nilkamal Crates Mumbai	318.00	LP064240	3/15/2007	22.51
			M/s V.K. Rub plast Gurgaon	318.00	LP064241	3/15/2007	14.7
8	06CST-0843 dt 11/01/2007	Carrier Ammunition I2A(Plastic)	M/s Paramount Plastic New Delhi	325.00	LP064255	3/24/2007	23.54
			M/s Bihani Udyog, Jabalpur	325.00	LP064256	3/24/2007	23.54
			M/s Nilkamal Crates Mumbai	325.00	LP064254	3/24/2007	23.54
			M/s V.K. Rub plast Gurgaon	325.00	LP064253	3/24/2007	23.54
			M/s Sai Industries Thane	325.00	LP064249	3/24/2007	23.54
			M/s Nityanand Udyog Nagpur	325.00	LP064252	3/24/2007	23.54
			M/s Miltech Industries Nagpur	325.00	LP064251	3/24/2007	23.54
			M/s Seth & Co. Mumbai	325.00	LP064250	3/24/2007	23.54
9	06CST-0842 dt 20/12/2006	Ball Insert Front	M/s. Manisha Rubber Mumbai	417.00	LP064258	3/24/2007	32.05
			M/s Kamal RubplastDelhi	417.00	LP064257	3/24/2007	40.06
			M/s Rohit Rubber Pune	417.00	LP064259	3/24/2007	40.06
			M/s V.K. Rubplast, Gurgaon	417.00	LP064261	3/24/2007	40.06
			M/s. Vikas Enterprises NOIDA	417.00	LP064260	3/24/2007	40.06

Sl No	TE No. & Dt	Item Name	Name & Address of the firms	Rate quoted (In Rupees)	S.O.No	Date	Value (Rs. In lakh)
10	06CST-0841 dt 20/12/2006	Bangalore Torpedo	M/s. Priya Preci Co. Nagpur	1,695.00	LP074056	6/20/2007	38.11
			M/s. Pandit Engg. Pune	1,695.00	LP074057	6/20/2007	38.11
			M/s. Sandip Metal Nagpur	1,695.00	LP074058	6/20/2007	38.11
			M/s. CNC Components Kolkata	1,695.00	LP074059	6/20/2007	38.11
			M/s. Shanti Arms Nagpur	1,695.00	LP074060	6/20/2007	38.11
			M/s. Raj Industries New Delhi	1,695.00			0
11	07-CST-852 Dt. 19.12.07	Base Plate 7.8 mm	M/s. Galaxy Epogy Cast Pune	70.00	LP074060	6/20/2007	71.07
			M/s. D.K. Industries Bhopal	70.00	LP074060	6/20/2007	48.05
			M/s. Castiplast Pvt. Ltd. Kolkata	70.00	LP074060	6/20/2007	30.03
12	08-CST-574 dt 13.09.08	Base Plate 7.8 mm	M/s. Galaxy Epogy Cast Pune	82.00	LP084169	12/26/2008	56.06
			M/s. D.K. Industries Bhopal	82.00	LP084168	12/26/2008	56.06
			M/s. Castiplast Pvt. Ltd. Kolkata	82.00	LP084170	12/26/2008	56.06
13	08-CST-579	Base Plate 8.5 mm	M/s. Galaxy Epogy Cast Pune	82.00	LP084172	12/26/2008	0
			M/s. D.K. Industries Bhopal	82.00	LP084171	12/26/2008	16.02
			M/s. Castiplast Pvt. Ltd. Kolkata	82.00	LP084173	12/26/2008	20.02
14	07CST-1018 dt 19/01/2008	Slipping Ring	M.s. V.K. Rubplast (I) Pvt. Ltd. Gurgaon	43.70			0
			M/s. Rohit Rubber Product Pune	43.70	LP074241	3/12/2008	63.8
			M/s. Paramount Plastic New Delhi	43.70	LP074242	3/12/2008	26.95
			M/s. Mechanical Seals & Pack. Industries Mumbai	43.70	LP074243	3/12/2008	36.84
			M/s. Corrosin Engg Ahmedabad	43.70			0
			M/s. Seth & Co. Mumbai	43.70			0
			M/s. Pooja Enterprises New Delhi.	43.70			0
Sl No	TE No. & Dt	Item Name	Name & Address of the firms	Rate quoted (In Rupees)	S.O.No	Date	Value (Rs. In lakh)
15	07CST-0848 dt 18/12/2007	Ball Insert	M/s. Kamal Robplast Inds. Delhi	451.00	LP074246	3/12/2008	62.9
			M/s. Manisha Rubber Mumbai	451.00			0
			M/s. Rohit Rubber Pune	451.00	LP074248	3/12/2008	25.16
			M/s. Vikas Extrusion Noida	451.00			0
			M/s. V.K. Rubplast India Gurgaon	451.00	LP074247	3/12/2008	37.74
16	08CST-0034 dt 07/05/2008	Time & Impact Fuze FFV-447 EMPT ASY	M/s. Micron Instrument Pvt. Ltd. New Delhi	3,419.78	LP084052	6/26/2008	107.76
			M/s. VXL Technologies	3,419.78	LP084053	6/26/2008	72.54
			M/s. Sandeep Metalcraft Pvt. Ltd.	3,419.78	LP084054	6/26/2008	72.54
17	08-CST-0575 dt. 04.10.08	Ball Insert Front & Rear	M/s. Rohit Rubber Product Pune	495.00	LP084132	11/5/2008	35.52
			M/s. Vikas Extrusion (P) Ltd.	495.00	LP084133	11/5/2008	23.68
			M/s. Manisha Rubber Enterprises Mumbai		LP084131	11/5/2008	59.19
			Ordnance Factory Chanda				
18	200700029/A dt 9.4.2007	Mortar Bomb 120 mm Empty	Kew Industries Ltd. Jalandhar	1,995.00	1071142/A1		124.92
			T.S. Kisan Faridabad	1,995.00			0
			R.K. Machine Tools Ludhiana	1,995.00			0
19	200600994/A dt 28.03..2007	Fuze Percn.DA 162 (M- 2)	Naveen Tools Co. Kolkata	595.00	1071195/A1	8/10/2007	124.85
			Priya Precision Co. Ltd. Nagpur	595.00	1071197/A1	8/10/2007	124.85
			Sandeep Metal craft Ltd. Nagpur	595.00	1071198/A1	8/10/2007	124.85
			Shanti Arms -TechLtd.Nagpur	595.00	1071199/A1	8/10/2007	124.85
			Tirupati Industries Kolkata	595.00	1071196/A1	8/10/2007	124.85
			Ashoka INDUSTRIES Kolkata	595.00	1071194/A1	8/10/2007	124.85
			Asha Industries Kolkata	595.00	1071192/A1	8/10/2007	124.85
			Hyderabad Precision Co. Hydrabad	595.00	1071193/A1	8/10/2007	124.85