

# Competition Law and Public Procurement in India

A report on advocacy through workshop and website

Submitted to:

The World Bank Group  
India  
70, Lodhi Estate  
New Delhi - 110 003

Prepared by:

**Public Procurement Observatory for the State of Uttar Pradesh**

(A World Bank Funded Observatory based at the Indian Institute of Management, Lucknow)



December 3, 2015

The public procurement observatory at IIML ([www.procurementobservatoryup.com](http://www.procurementobservatoryup.com)) was established in 2013 to create a platform for observing public procurement processes and advocating better practices by initiating dialogue among relevant stakeholders for enhancing public procurement performance in the state of Uttar Pradesh. The observatory pursues qualitative and quantitative analysis of public procurement across various Indian states and shares it with government officers and citizens through a portal, blogs, tweets, newsletters, workshops and training sessions. By observing procurement process and advocating better procurement practices, it aims to encourage significant savings in public procurement. The observatory has developed various key performance indicators (KPIs) to understand and benchmark the public procurement across eight Indian states: Delhi, Kerala, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. It has also developed a process visualization tool to help users better understand procurement process on various KPIs.

The observatory hosted a workshop on November 28, 2015 in collaboration with the World Bank and the Competition Commission of India on “Competition Law and Public Procurement” at the Indian Institute of Management, Lucknow. It was inaugurated by Mr. Ashok Chawla, Chairman of Competition Commission of India. In his keynote address Mr. Chawla discussed the significance and benefits of competition in public procurement. He also raised concerns on the sanctity of carrying public procurement transactions based on executive instruments and instructions. He concluded by envisioning the future architecture of the public procurement in India encompassing a public procurement law and a competition law together taking care of violation of procurement process or behaviour.

The first session of the workshop was addressed by Ms Renuka Jain Gupta, Advisor (FA) Competition Commission of India. She discussed about the scope of competition law and its applicability on public procurement. She highlighted that the competition law aims to help the public officials and to supplement their decision-making. The competition act prescribes penalty for bidders and contractors who act in consort with an ulterior motive to stymie the healthy competition in the procurement setup and not the procurement officials.

Ms Gupta underlined factors which affect the competition in public procurement such as lack of competition neutrality and special status to government enterprises in procurement, role of industry associations in price fixation, market manipulation by proprietary goods manufacturers and price predictability. She opined that apart from the competition concerns in public procurement, there is a need to lay down special emphasis on defining accurate functional requirements before proceeding for procurement and vendor development by the procuring entities.

In the next session, Prof. Samir K Srivastava and Prof. Amit Agrahari from Indian Institute of Management Lucknow shared some empirical findings to better understand competition in public procurement. At the outset they briefed the participants about the aims and objectives of the observatory and its multi-pronged activities. They shared that the observatory has developed various key performance indicators (KPIs) as well as a process visualization tool that helps users to better understand and benchmark the public procurement process. The observatory is also working towards developing a collaborative network of public procurement

experts from within India as well as across the globe and is exploring partnerships with leading institutions such as University of Hull (UK) and University of Cincinnati (USA) for open discussion and collaboration on competition in public procurement, open data sharing and information federalism.

Based on almost 70,000 tendering process instances across eight Indian states: Delhi, Kerala, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal, they shared some interesting findings and areas that need attention. Promotion of competition requires larger number of vendor participating in the process. The process design should enable and encourage competition among vendors. A ratio defined as the number of technically qualified bidders to number of bidders finally awarded the contract can be used to measure level of competition at the initial stage of procurement. To ensure fair competition, most of the technically qualified bidders should not be awarded the contract. They shared that in some cases almost all technically qualified vendors are awarded the contract since no single vendor may have the capacity or capability. However, it is observed in other cases that the work is divided into small pieces and all vendors are given a piece of the contract even if capacity is not a constraint. This defeats the very purpose of conducting the procurement process.

Table below shows the bidder adequacy ratios for financial bids for the eight states observed. It is defined as the ratio of number of technically qualified bidders to the number of bidders awarded the contract and is a measure of adequate competition in the later stage of tendering process. Higher score in this ratio indicates greater competition among suppliers.

State		2011	2012	2013	2014	2015
Uttar Pradesh	Tenders Observed	121	11	164	375	639
	Bidder adequacy ratio for financial bids	2.08	2.25	2.65	1.79	1.6
Delhi	Tenders Observed	629	1077	1344	1417	551
	Bidder adequacy ratio for financial bids	3.71	3.54	3.72	4.17	4.42
Maharashtra	Tenders Observed	NA	654	2740	5477	12814
	Bidder adequacy ratio for financial bids	NA	2.95	3.13	3.02	3.11
Rajasthan	Tenders Observed	15	425	575	476	182
	Bidder adequacy ratio for financial bids	3.8	2.57	2.34	2.67	2.78
Tamil Nadu	Tenders Observed	180	143	391	877	559
	Bidder adequacy ratio for financial bids	0.54	0.94	1.89	0.83	1.27
Odisha	Tenders Observed	683	602	1936	1273	342
	Bidder adequacy ratio for financial bids	1.2	1.18	0.78	0.75	0.79

Source - <http://www.procurementobservatoryup.com/visualization-1.html>

Subsequently, common procurement practices were discussed with the participants and simultaneously their views on these were sought. They concluded by suggesting that e-procurement shall be made mandatory for public procurement and public procurement laws should contain enabling provisions for promoting competition along with penal provisions.

In the last session, Mr. Shankar Lal, Country Focal Point (Procurement) at the World Bank Group briefed the participants about the World Bank's span of operations geographically as well as functionally. He shared that the World Bank's concerns in competition emanates from the fact that better competition results in better value for money. He gave an overview of World Bank's initiatives for strengthening the public procurement systems around the world. The steps in direction are development of procurement guidelines and standard bidding document which discourage malpractices and promote competition. The other steps consist of designing tools for assessing the government procurement system, organizing capacity-building workshop for stakeholders to spread awareness about the best practices for overall improvement of procurement system, and setting up of public procurement observatories in few selected Indian states (Uttar Pradesh, Rajasthan, Assam, Chhattisgarh and a National Observatory at New Delhi) to help the state governments in improving procurement practices and outcome in the states.