

Transparency International India Workshop

Address by CVC

(At India International Centre on 22nd August, 2012)

Adm. R.H.Tahiliani, Shri P.S.Bawa, Chairman, Transparency International, _____ participants, ladies and gentlemen.

It is a great pleasure for me to participate in this National Workshop on Integrity in Public Procurement and Whistle Blower Protection in India, organized by the Transparency International, India Chapter. I am glad to note that important issues like cartelization in Indian industries, implementation of Integrity Pact and Whistle Blower protection will be deliberated during the workshop. TI India Chapter has been playing a valuable role in the fight against corruption in India. The Central Vigilance Commission has been supportive of the various anti-corruption initiatives undertaken by the Chapter from time to time.

1. Procurement of goods and services is a very important government activity in a developing economy. Public procurement contracts are instruments which enable the Government to deliver promised goods and

services to the citizens. Achievement of our development goals depends to a great extent on the effectiveness and efficiency of our public procurement system.

2. Public procurement also serves as a means of attaining national objectives and social outcomes like indigenization, self-reliance, protection of small scale industry, protection of children, environment and human rights.

3. Public procurement in India constitutes about 28% of the GDP. During the year 2008-09 about ` 12 lakh crore was spent by Government of India and its PSUs on public procurement (GDP of India during the period was ` 47 lakh crores). Governments both at the central as well as state levels commit a large portion of their budgets to procurement. Therefore any wastage or loss of tax payer's money in public contracts due to corruption, fuels public anger, especially in an age of increased availability of information along with demand for greater transparency, equity and fairness.

4. As compared to procurements in the private sector, procurement in public sector is required to accord high priority to accountability, transparency and integrity. It

has to be fair to all potential participants. It is answerable to a large number of stakeholders, be it the taxpayers, beneficiaries of Government programmes, legislators or even the vendors. It is therefore governed by more formal protocols and regulations. Ironically, despite being such a regulated activity, public procurement is also the government activity, considered world over, to provide the greatest scope for corruption.

5. Integrity in public procurement therefore has to be a priority in any anti-corruption strategy. In recent years, a lot of effort at the national and international level has been focused on devising methods and developing tools to mitigate the risk of corruption in public procurement.

6. Article-IX of the UN Convention Against Corruption prescribes the basic requirements to be put in place by countries to ensure integrity in public procurement.

7. The Organization for Economic Cooperation and Development (OECD) has developed several practice guidelines to ensure integrity in public procurement. It has a wealth of information which would be very useful for the procurement staff to study.

8. Transparency International has developed the concept of Integrity Pact which is successfully used in several countries. The Commission has been promoting this concept since 2007. It has been regulating the appointment of Independent External Monitors.

9. World Bank and Asian Development Bank have also developed several tools for assessing the risk of corruption in public procurement.

10. The United Nations Global Compact, is a United Nations initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies. It lays down a framework to be adopted by companies to help them comply with the principles of human rights, environment and anti-corruption.

11. The prime objective of public procurement is to achieve value for the tax payers' money. Value for money can be ensured in procurement only if adequate competition is generated and if objectivity, transparency and fairplay is maintained at all stages of procurement.

12. Integrity in procurement requires correct framing of user requirements, objective evaluation of offers and prudent management of the contract. It also needs to be

appreciated that maintaining integrity in public procurement is not merely an ethical requirement but an operational necessity.

13. The risk of corruption in public procurement is dependent on various factors like the cost of the procurement, complexity of the technology involved, the urgency to acquire the goods or immediacy of the project and the extent of discretion enjoyed by the procurement officials. A sound procurement system should be able to address these risk factors.

14. Speed or urgency provides an opportunity for corruption. Urgency and exceptional circumstances are often quoted as reasons to deviate from established procedures. Commonwealth Games 2010 is an example of this.

15. Public procurement system consists of three important components. A broad framework of laws and regulations at the federal and the state levels. Second is the, organizational structure and process governing procurement in each organization. Third and the most important is the human resource involved in public procurement.

16. In India we have a relatively well developed public procurement system backed by sound regulations manifested in numerous manual and guidelines. There is a good oversight mechanism in the form of audit and vigilance. In addition, the elected representatives, media and civil society keep a keen watch on public contracts.

17. However, problems still persist. I would like to highlight some of the problems faced by the procurement managers.

18. Multiplicity of regulations, guidelines and procedures issued by several agencies often create confusion and ambiguity.

19. Procurement procedures and guidelines are understood, applied and enforced more in the letter, without understanding the spirit behind them. This is because most of the procedures stipulate only the operative part and do not explain the underlying principles.

20. The procedures or guidelines should be seen as controls introduced in the procurement process to uphold competition, fairplay, integrity and objectivity. The ultimate test of any procedure is the extent to which

it is able to promote these values. A good Public Procurement Manual is one which explains the underlying principles and guides the procurement managers instead of merely prescribing controls.

21. It is important that the rules are clear and simple so that people know what the system is supposed to deliver. Complex, variable and ambiguous rules not only create opportunities for corruption but also increase the probability of their violation.

22. Excess of rules also act as a de-motivator. There cannot be regulations or guidelines for everything. Procedures cannot cover every situation or eventuality. Rules and guidelines are in black and white while the reality on ground is often in shades of grey. Integrity in public procurement ultimately depends on the prudence exercised by the procurement managers and the propriety of their decisions.

23. Procedures or guidelines while prescribing controls also need to provide space for operational freedom. Balancing the two is difficult but important. Making the stipulations more specific and less ambiguous reduces the opportunity for manipulation. On the other hand making things too specific restricts operational freedom

and hampers efficiency. Many of the prevalent public procurement concepts or guidelines in India need to be reviewed in the light of modern day concept of supply chain management. How do we reconcile the concept of open solicitation with the requirements of vendor development or supplier consolidation which are strategies to reduce costs and enhance quality. A good public procurement system is the one which balances all the concerns.

24. Finally, it is the ethical values and integrity of the people involved which is most important. The best of regulations can be subverted by human greed.

25. Unlike in many other countries we do not have a nodal authority exclusively responsible for framing procurement policies, overseeing compliance and providing clarification to the procurement managers. In the absence of such an authority people incorrectly perceive the Central Vigilance Commission to perform such a role. Organisations frequently approach the Commission seeking advice when faced with problem in an ongoing procurement. It needs to be understood that the Commission as an independent oversight body cannot interfere in managerial decision making. As an anticorruption watchdog it issues guidelines only to

reduce the risk of corruption in public procurement. It does not guide public procurement per se, which is the domain of the executive.

26. The Commission in 2010 had recommended to the Government, the formulation of a comprehensive standard to guide public procurement. The Commission had also recommended the setting up of a nodal authority to deal with public procurement policy.

27. A Draft Public Procurement Bill is being legislated by the Government of India with detailed regulations to guide public procurement. This is a highly welcome step and the Commission has been interacting with the Ministry of Finance with regard to the integrity aspects in the Bill.

28. The Commission has also recommended the enactment of a False Claims Law, which aims to empower the citizens to fight corruption. Through this provision, any citizen can seek punishment and recovery of money from any contractor who charges extra money from the Government and delivers less than the contracted quantity or quality of goods and services. It also provides for reward and protection to such citizens. For example, if a CGHS empanelled hospital

fraudulently inflates the treatment expenditure, the beneficiary who knows the truth can proceed against the hospital for false claim. From the excess money recovered from the hospital, a portion would be given to the beneficiary as a reward. Such a law is prevalent in many other countries. The Government is working in this direction.

29. One of the major constraints in public procurement in India is the existence of a knowledge gap amongst those responsible at operational levels for public procurement. Improprieties or irregularities in procurements are often a result of inadequate understanding of the procurement procedures.

30. In India public procurement has never been recognized as a specialized activity requiring specialized knowledge and skill. There is absence of a professionally trained cadre to manage procurement in most organizations, besides inadequate training to the staff handling public procurement. In most of the developed countries and international organizations, occupying a procurement desk requires some professional qualification. There is a need to have qualified staff handling procurement and to provide adequate

professional training to convert the procurement officials into professional procurement managers.

31. While procurement decisions are an important function of public executives, formal training in this aspect is not imparted in our academies, staff colleges and training institutes. Things are learnt through field experience.

32. No reform in the Indian public procurement system can be complete without the active role of private sector which has an equal stake in it. There is a need to sensitize and build the confidence of the private sector in promoting integrity and healthy competition in public procurement. Businesses must refrain from adopting corrupt practices while obtaining Government contracts. There is a strong business case for companies to adopt an anti-corruption strategy. Besides enhancing their reputation for honest business, they can ensure a cleaner and more sustainable market environment for future growth. UK Bribery Act and the Foreign Corrupt Practices Act of USA have stringent provisions to punish companies which fail to do due diligence in preventing corruption. Similar provisions are being legislated in the

Prevention of Bribery of Foreign Public Officials Bill in India.

33. Application of IT and e-procurement is a very effective means of not only ensuring efficiency in public procurement but also enhancing competitiveness, transparency, objectivity and integrity. It enables vendors to participate in a tender who were otherwise prevented from doing so. Commission has been actively promoting the adoption of e-procurement by procuring organisations. There is a lot of misconception and knowledge gap with regard to e-procurement. As a result even organizations which have invested in an e-procurement system are not able to take full advantage of it.

34. To bridge this gap the Commission recently organized a one-day workshop on e-procurement wherein problems involved in e-procurement were discussed by practicing procurement managers from various sectors. Sharing of knowledge and experience through such workshops is the best form of capacity building.

35. Confidentiality of information and; security and integrity of the application as well as the data is of utmost importance in e-procurement. Any compromise

on these issues would negate the whole purpose of e-procurement.

36. Whistleblower protection is the other important issue being deliberated in today's workshop. Encouraging whistle blowing has been recognized as another effective weapon in the anti-corruption armory. Whistle blowing as a formal mechanism evolved with the realization that reporting of malpractices at the workplace by the employees was more effective than detecting them through inspection. Organisations were encouraged to establish a system of hotline to enable employees to anonymously report unethical practices. Now most of the countries have some form of whistle blower law accompanied by a whistle blower protection mechanism.

37. Providing for whistleblowing is an important corporate governance measure which is regulated by SEBI guidelines. The Government of India in 2004 passed the Whistle Blower Resolution also called the Public Information Disclosure and Protection of Informer Resolution. Under this, the Commission is the designated authority to receive whistle blower complaints relating to corruption in the Central Government and its

organizations. The best way to protect a whistle blower is to keep his identity secret. The Commission has evolved a foolproof system to mask the identity of the complainant. Even after this, if the whistleblower gets identified and faces physical threat, the Commission provides police protection. Commission also intervenes to protect the complainant from harassment by the management.

38. Last year, the Commission received about 900 such complaints out of which only 20% were found fit for investigation. Many of them have led to successful investigation and punishment while at the same time protecting the whistle blower.

39. Whistleblowing is essentially a preventive measure which enables reporting of malpractices before they occur or while they are happening. In India whistle blower complaints are often made much after the occurrence of the event. Many of them are also made with vested interests. Creating awareness and educating citizens is essential to ensure the effective implementation of this provision. Whistle Blower Act is now under legislation, which is expected to overcome

some of the shortcomings and provide stronger protection to the whistle blowers.

40. At the end, I wish to assure the gathering that the Central Vigilance Commission is deeply committed to combating corruption and in this fight we support any initiative undertaken by the civil society organisations, the corporate sector, the media and the citizens at large. I wish the workshop all the success and hope it comes up with valuable recommendations to address the problems faced by procurement managers. I am optimistic that the ongoing reforms would usher in a better public procurement regime in the days to come.