

Public Procurement Bill-2012

Part II: An overview of the Bill

Presented by
Keshav Prasad Varma

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The Overview

- What does the Bill do
- What does it overdo
- What does it not do



What does the Bill do

- Fills a vital gap in governance
- Creates awareness amongst stakeholders
- By conforming to the existing GFR, it ensures a smooth change over.



What does the Bill do

It goes beyond the GFR and broadens its coverage

Firstly and most importantly, it adds to the list of objectives

- In preamble, 'maintaining integrity and public confidence in public procurement process'
- In clause 5(1)e, 'evolve mechanisms to prevent corrupt practices'

Concern for prevent corruption is very pronounced, fresh clauses and even a full chapter has been added

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What does the bill do

- Fixes threshold at Rs. 50 lakh

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What does the Bill do

- Establishes Central Procurement Portal to strengthen transparency.
- Introduces Electronic tendering.

These steps shall help in meeting other objectives too.



What does the Bill do

Introduces

- Framework Agreement
- Electronic Reverse Auction

As additional tools methods of procurement



What does the Bill do

Introduces Integrity Pact

- Directives on what conducts are not acceptable
- Penalty for unethical acts.

The pact shall lead to better understanding between purchaser and bidder.



What does the Bill do

Introduces Grievance Redressal Mechanism

- Independent panel to hear grievances

This would restore confidence of bidders in the procurement process



What does the Bill do

Introduces Professionalization

Govt. to prescribe/ specify:

- Professional standards
- Suitable training
- Certification requirements



What does it overdo

Emphasis on anti corruption measures

- There is an integrity pact Cl.6
- There is a complete chapter (four) on 'offences, Penalties and Debarment', (which repeats some provision of Integrity Pact.)

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What does it overdo

Cl. 6(3) clarifies that punishments under integrity pact are 'without prejudice to provisions contained in chapter 4'

The provision in this Act shall, therefore be in addition to, and not in derogation of, the provisions of any other law for the time being in force, Cl. 53

The conduct of the procuring entity as well as the bidder are subject to other laws take, as for example:

Indian Penal Code 1860

Prevention of corruption act 1988

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What does it overdo

- It may be worth examining if such stringent measures have been applied to other fields of governance also.
- The burrucracy at present is already paralyzed by fear on account of prosecutions that followed recent scams. The proposed provisions may therefore adversely affect the procurement process

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What does it overdo

Many questions arise out of the provisions:

- What shall constitute interference in procurement process?
- What is lobbying ?
- If lobbying is non-existent, will it come in the way of the procurement entity (or his organisation) getting to know or understand new innovations of technology?
- How easy or difficult is defining a vexatious complaint?
etc.

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What does it overdo

Grievance Redressal Mechanism is cumbersome

- The presentation shows that the process may take up to 130 days
- The redressal committee shall be headed by a retired High Court judge. The committee has been directed to make its recommendation within 30 days or within a further period of 15 days, if there are sufficient reasons for delay.

In our country a process involving any judicial entity does not appear to work within a time table.

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What does it not do

Several issues and procedures today come in the way of efficiency in procurement process and getting value for money. The Bill does not address those issues: the most important of which are,

- Quality of subject matter of procurement
- Dispute Resolution
- A Monitoring Cell for public procurement at Government level

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Quality of Subject Matter of Procurement

The quality of procured items is perceived to be poor

- The Bill does not even emphasise need to improve the perception or suggest ways to improve it.
- Without this emphasis, the procurement process would always end justifying L1.
- The contentious issue of Vendor Development is but an aspect of quality buying.



Dispute Resolution

The Bill defines the procurement process to come to an end with award of contract: so Dispute Resolution is not In its scope.

- Disputes do and shall arise in contracts
- The dispute resolution mechanism today is long drawn and tary: it slow down the procurement process; execution of National Highway project is a burning example

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Dispute Resolution

- The Bill ought to cover Dispute Resolutions to improve efficiency of the procurement process.
- Stating that other laws already exist (The Indian Contract Act, The Arbitration and Conciliation Act etc.) is not an answer. The Bill has gone in overdrive in combating corruption and introduced more stringent measures.

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Central Monitoring Cell

- There is need to establish a Central Monitoring organisation in the Ministry to oversee implementation of the Act, frame rules under the Act, clarify issues, prepare or approve manuals, Standardise Bidding Documents (a very contentious issue today) and coordinate all procurement matters.
- Most of the countries have such a cell, including those who recently enacted Public Procurement Bill.



Thank You

