Government Procurement

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EU won't get further access to government business

AmitiSen, ET Bureau

April 2, 2012, NEW DELHI: India will not concede to EU's demand that European companies be allowed to participate in procurements made by public sector enterprises in the country as part of a free trade agreement being negotiated.

New Delhi has said that its commitment on government procurement will not go beyond the existing domestic provisions that allow foreign companies to bid for procurements by ministries and departments for self consumption, according to a government official.

The EU has sought unhindered access to India's government procurement market estimated at about $150 billion per annum.

"The EU has positioned government procurement as a critical area for signing the free trade deal," the official told ET. "It is insisting that India should provide market access in Central entities and PSUs, but India has put its foot down."

The government has stressed that procurement market access being discussed would cover purchases for government purposes only and not what is done for commercial sale or resale. That is why PSUs can not be covered. Sourcing by the Indian Railways and the National Highways Authority of India will also remain restricted territories for EU companies.

In a meeting with EU trade commissioner Karel De Gucht in Delhi last month, commerce and industry minister Anand Sharma explained that India was in the process of formulating a public procurement law which would be mandatory for all Central government entities engaging in procurement.

Since the draft bill is still being discussed with stakeholders, the minister said it might not be possible for India to undertake commitments on areas that are still under discussion.

"India has also clarified that procurement market access being discussed would cover procurement for government purposes only and not that done for commercial sale or resale," the official added.

A number of developed countries, including the EU and the US, are keen that India join the government procurement agreement of the World Trade Organisation that is a plurilateral agreement signed between 42 member countries. India is an observer in the GPA meetings, but has so far resisted attempts of other countries to rope it in.

India has also asked the EU to clarify what India would gain by including government procurement in the bilateral free trade agreement. According to a study carried out by the Centre for WTO Studies at the

Indian Institute of Foreign Trade, total government sourcing done by the EU from foreign companies is less than 1% of total purchases.

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'Domestic sourcing for solar mission no violation of WTO rules'

AmitiSen, ET Bureau

April 9, 2012,NEW DELHI: India has told the US that it does not intend to alter the domestic content requirement in its ambitious national solar power generation programme as it is essentially procurement by the government, which is outside the purview of the World Trade Organisation.

"India is not a signatory to the Government Procurement Agreement under the WTO and hence is not under any obligation to follow rules prescribed by it," a government official told ET.

US commerce secretary John Bryson had in a recent meeting with commerce and industry minister Anand Sharma in Delhi raised concerns about the 30% local sourcing requirement in projects under the Jawaharlal Nehru National Solar Mission, saying it might be in violation of WTO norms. "We have categorically told the US that we do not view the domestic sourcing clause as violative of WTO rules," the official said, adding, "We have no plan of amending the clause."

He said the US was now trying to influence the policy for the second phase of the solar mission.
The second phase, due for launch next year, will aim to consolidate the achievements of the first phase.
As per the solar mission, indigenous manufacturing capacity for solar power equipment is vital if the goal of 20,000 MW of solar power is to be met by 2022 in three phases.

A criteria for ensuring domestic content for first phase projects was thus introduced, making it mandatory for projects based on crystalline silicon technology to use the modules manufactured in India. Additionally, 30% domestic content is mandatory for all new solar thermal power projects sanctioned under the first phase.

Stressing that there is no flouting of WTO rules, the commerce department has clarified that domestic content requirement is applicable to grid solar power projects where procurement of solar power will essentially be done by the government through NTPCVidyutVyapar Nigam, the designated entity.

The commerce department further explained that grid solar power projects are supported under the Jawaharlal Nehru National Solar Mission only through tariff and not through capital subsidy. Capital subsidy is available for off-grid projects and there is no domestic content requirement on modules in such projects.

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EU insists on government supply contracts

AmitiSen,ET Bureau

11 Jan, 2012, NEW DELHI: The European Union (EU) has indicated that if India keeps government supply contracts out of the bilateral trade and investment agreement, it could affect flow of business to Indian joint ventures and subsidiaries established in the region.

The Indian government makes purchases from other countries but has not made any commitment to continue doing so.

The EU, which is negotiating the terms of the agreement with India, is keen on making it binding on India to do so.

At a recent official-level meeting in Brussels, EU officials claimed that EU's purchases from non-EU sources was about 16% of total government sourcing done in the region, and not below 1% as claimed by research bodies in India and some other countries. "EU officials say that all firms in Europe that have investments from a foreign country are also to be considered as non-EU sources.

By including government contracts going to such firms, the EU claims that foreign sourcing increases to 16%," an Indian official told ET. If India does not get into a bilateral government procurement agreement (GPA) with the EU, then Indian companies, including subsidiaries and joint ventures established in the 27 EU countries, could be deprived of the current business they are getting, the EU officials warned.

Since India is not a part of the GPA of the World Trade Organisation, the EU could ban government sourcing from Indian companies, if it likes. The EU's annual procurement is estimated at $277 billion, against the global government sourcing valued at $1.3 trillion and India's $1.5 billion.

"While the EU cannot discriminate on the basis of ownership of firms established in the region, it can certainly discriminate on the basis of sourcing that these firms do from foreign countries," said Abhijit Das, head, Centre for WTO Studies, IIFT.

This means that if there is a subsidiary of an Indian company in the EU or a joint venture that sources from India, then the GPA allows banning such firms for bidding for government orders. Das, who recently concluded a study for the commerce department on the benefits of GPA, maintains that India has little to gain in the EU.

Contesting the EU claim of 16% sourcing from non-EU countries, Das said that as per the EU's notification in the WTO's GPA committee in 2006, the sourcing was just 0.3%. "We do not know on what basis it is making its claim," Das said.

Unfortunately, India's own data on the business that Indian joint ventures and subsidiaries in the EU get from the government is almost non-existent. "We have tried to get the data from Indian IT and other companies, but they are not forthcoming. The commerce department has to carry out a detailed study on the numbers to analyse the situation better," a government official said.

The EU is keen to get into a GPA with India to ensure that the country does not stop its global purchasing at any point of time. "The Indian government does make purchases from foreign countries, but the country has not taken on any commitments in the area. The EU wants India to give a guarantee that the sourcing would not stop in the future," the official said.

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Domestic preferences in public procurement

SandeepVerma, Business Standard

December 26, 2011: As India gets on way to make significant changes to her government contracting frameworks, it may be worthwhile to survey international practices on two important aspects of domestic preferences in public procurement, namely: (a) the participation of foreign bidders in domestic public procurement markets; and (b) the treatment of non-government actors such as state-owned enterprises (SOEs) - or PSUs as we know them in India - under national government procurement laws.

With regard to the first aspect, the general principle, internationally, is to allow foreign bidder participation only to the extent obligated under a country's treaty or bilateral trade pacts, or to progress global procurements only to the extent that domestic capacities are unavailable. France, for instance, has a law requiring public contracts to be split, and global procurements can be pursued only if contract splitting is not possible for the benefit of domestic suppliers. Canada - a founding member-state of the WTO's plurilateral Agreement on Government Procurement (GPA)—saw an interesting ruling by its Supreme Court in 2009, when foreign bidders were denied the right to challenge public procurement decisions, even as Canada's procurement system allowed them limited participation under its multilateral/ bilateral trade obligations. The US Federal procurement system similarly creates a "walled garden", allowing foreign bidder participation only from countries which have bilateral/ multilateral trade pacts with the US on government procurement, and such participation is further limited only to certain contract-types and above specified value-thresholds agreed under international commitments of the United States.

Other than de jure methods of limiting foreign bidders' participation, most GPA Member-States also employ a host of de facto mechanisms to discourage such participation. The US, for instance, has had a long-standing "Buy American" Act, imposing minimum domestic content requirements, as also mandatory "set-asides" and "unbundling" policy requirements that have the side-effect of limiting foreign participants, while enhancing the involvement of small businesses. Faced with the recent economic recession, the EU had reduced the minimum mandatory time limits for notification of public tenders and increased the maximum thresholds for restricted (limited) tendering, with the result that foreign bidders effectively had less time and opportunities within which to file meaningful bids. Adopting a different strategy, the US mandated, as an essential component of Federal stimulus funding projects, that all steel and cement to be used in public works would have to be manufactured within the United States.
While some practitioners see these international movements as "protectionist", it could be a rather simplistic phrase to describe the philosophy underlying such domestic preferences in public procurement; and the rationale underlying such preferences is deeply embedded in sound economic logic: unlike free choices expressed by consumers in commercial marketplaces, public funds spent on government contracts do not amount to "voluntary" expenditures by a country's citizens. As a result, almost every country steers its public spending on procurement contracts towards domestic manufacturers and suppliers of services.

The logic in strictly regulating access of foreign bidders is particularly compelling for countries that are yet to become members of the GPA. If such a country, say Country "X", were to enact a law that unconditionally provides for national treatment of foreign bidders, it could end up jeopardising its own domestic industry for the simple reason that while bidders from Country “X” would have little/ no access to procurement markets in other countries, bidders from all other countries would have complete access to the procurement marketplace in Country “X” as a result of the enactment. The incentive for GPA member-states, or for any other country for that matter, to negotiate international agreements with Country “X” for granting its bidders reciprocal market access would be virtually eliminated in the process.

On the second aspect, namely, the imposition of non-commercial public policy objectives on procurement decisions of SOEs, most countries follow two broad sets of strategies. Some countries, such as China, keep most of their state enterprises as far away as possible from the normal legal requirements of transparency and competition. Others, such as Mexico and Brazil, recognising the important roles played by their public sector in fostering national economic growth, usually formulate separate procurement regulations for important PSUs. Important examples of this second approach are the PetroleosMexicanos (Pemex) law of Mexico and the Pertobras law of Brazil for their oil PSUs, and the Utilities Directive of the EU that covers entities such as electricity and water supply providers.

The core policy objective in exempting PSUs from the application of normal procurement laws is to provide them with a level-playing field with other actors in commercial marketplaces; and the importance of this concept becomes even more significant in the context of a developing country SOE, operating within limited budgets, when competing with foreign bidders whose R&D costs may be covered by large developmental, cost-reimbursement contracts awarded by their respective national governments.

In summary, formulating smart policies on public procurement requires a careful consideration of both the tactical and strategic aspects of public procurement in the context of prevailing international practices; and the achievement of important socio-economic objectives of the Government may therefore necessarily require the adoption of a reciprocal approach while implementing the reforms process.

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Few gains seen from west by opening govt supply contracts to foreign players

AmitiSen, ET Bureau

11 Oct, 2011, NEW DELHI: India may not make significant gains by taking on global commitments to open up government supply contracts to foreign players as a number of developed countries, especially in the EU, protect markets through procedural norms that foreign players cannot fulfill, according to initial findings of a government study.

The study, which is yet to be finalised, reveals that in certain years, government purchases made by the EU from non-EU sources was less than half a percent of total sourcing, an official told ET.

"The benefits that government procurement pacts could bring to the country in terms of increased business and improved transparency also have to be weighed against the costs of putting in place relevant systems and practices", the official said.

India is facing pressure from the developed world including the EU, Japan, Australia and the US to get into bilateral government procurement pacts and also become a signatory to the plurilateral GPA at the WTO which, at present, has 14 members including the EU and the US.

Although India allows foreign companies to bid for government orders, it has the freedom to impose curbs as and when it wants as it has not signed any agreements and taken on commitments on the same. It also is not obligated to switch over to alternate bidding and accounting systems as laid down in various agreements to ensure transparency.

"The commerce department wanted a comprehensive study on the costs and benefits of GPAs so that there are no illusions about the possible market access gains and other benefits and losses," the official said. The Centre for WTO Studies, which is a research centre on WTO issues under the commerce department, was assigned the task of carrying out a comprehensive study on the possible gains and losses from bilateral GPAs as well as the GPA under the WTO.

Although total global business from government purchases is estimated at over $1.5 trillion, more than six times India's total goods exports, very little is actually open for foreign players as the bidding process and other qualification procedures in most countries is non-transparent and favours domestic suppliers.

"The study highlights that in some years, government procurement in the EU from foreign countries was as low as 0.3%," another official said.

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New policy to earmark purchases from domestic electronics firms

SurabhiAgarwal, Livemint

14 September 2011, New Delhi: India is considering a move that would make it mandatory for all government departments to make at least one-third of the annual purchases of computers and other electronic equipment from domestic manufacturers, according to an official at the department of information technology (DIT) who did not want to be identified.

The move is aimed at giving a boost to electronic manufacturing in India. While parts of the initiative may be in breach of international trade rules, the government is looking at ways of ensuring compliance, the official said.

The government is one of the biggest buyers of hardware in India. According to market research firm International Data Corp., 6-8% of the $10 billion (Rs. 47,000 crore) that will be spent on computers, servers and other hardware in India in the current fiscal to March will be accounted for by the government.

The idea has been welcomed in some quarters, but several experts said it’s impractical because India lacks the electronic components industry backbone that would make local manufacturing work. Most companies that manufacture in India merely assemble components imported from China and Taiwan.

There are several who consider the move a bad idea and some of them, according to the DIT official, have begun lobbying against it. Mint couldn’t independently ascertain this.

In 2009-10, India’s electronics import bill was $29 billion and this is expected to rise to $323 billion (at current growth levels of 16%), which in turn will lead to a trade deficit of $296 billion in fiscal 2020, according to a report by Avendus Capital Pvt. Ltd.

The draft DIT policy has been sent out for comments to other ministries, the DIT official said.
The ministry’s policy note is based on recommendations by the Telecom Regulatory Authority of India. A government task force on manufacturing also said in a report that India will spend $400 billion on electronics in 2020, up from around $45 billion in 2009. In a recent interview to Business Standard, minister of state for planning Ashwani Kumar said that it was possible that by 2030, the import bill for electronic equipment will outpace the petroleum, oil and lubricants segment unless domestic manufacturing kicks in. India spent around $106 billion on oil imports in 2010-11.

According to the same newspaper report, the Planning Commission had proposed 30% preferential access, or reservation, be given to domestic manufacturing in government procurement.

According to the policy being considered, companies that are selling products not based on patents registered locally, can sell to government departments only if the products have had 25% of their value added locally in the first year. This has to increase to 45% by the fifth year. In the case of companies selling products based on local patents, the corresponding proportion has to be 40% and 60%.

Although most technology multinationals have research and development facilities in India, few make products locally and even those that do, will be hard-pressed to meet the criteria laid out in the policy.

“Even companies that manufacture in India are mostly assembling components imported from mainly China and Taiwan. No company manufactures everything themselves or has all suppliers in one country,” said an executive at one of the top IT companies operating in India, who spoke on condition of anonymity.

The executive added that there are hardly any component makers in India and that in the case of some products, such as servers, there is little scope for localization.

“The maximum localization that can be done in any product is 10%,” said a second executive at another IT company, who too didn’t want to be identified. He added that even though India has a large domestic market and cheap labour, the reason IT manufacturing isn’t a thriving activity is because of poor infrastructure and logistics, besides the tax regime and labour laws. “Why is the government forcing companies to set (up) shop; they should just fix these issues and companies will come on their own.”

The DIT official said that the government would aim to ensure that the support systems are also established.

“We are setting up semiconductor fabs (fabrication units), which command 10-40% of the value of the product, giving incentives to the industry and setting up clusters, which will be islands of good infrastructure,” countered the DIT official. “And for the rest, there are electronic manufacturing services companies such as Foxconn, Flextronics, which manufacture products across the board in bulk. Currently, their operations are very small in India, but if they expand, then the industry can procure from them.”

The department’s only concern is that some aspects of the policy could violate World Trade Organization (WTO) norms. “Government procurement is exempt from the WTO framework,” the DIT official said. “However, private procurement is not. Some of the government-licensed agencies may fall into that category, so we have to figure out how to include them in the policy.”

PoornimaShenoy, founder and former president of the India Semiconductor Association, said the proposal does not look like it violates any of WTO terms. “The government is only saying that if it gives business worth thousands of crores to these companies, then some part of it has to be returned to the country in the form of investment,” she added.

This isn’t the first time the government is trying to give a push to the domestic manufacturing of electronic equipment. In 2007, it unveiled the Special Incentive Package Scheme to turn India into a chip production hub. Under the policy, the government offered to underwrite 20-25% of the capital expenditure. Not only was the policy ill-timed—it coincided with the global economic crisis—but domestic industry found the threshold limits for investment unreasonable.

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WTO diplomat: 42 nations nearing deal on state contracting to unlock billions in commerce

John Heilprin, Associated Press

18 October 2011,GENEVA - An international deal is nearing agreement that would open up government contracting to more transparency and foreign competition and unlock tens of billions of dollars in new opportunities, a World Trade Organization diplomat said Tuesday.

Nicholas Niggli, a Swiss diplomat to the WTO who chairs its government procurement committee, said 42 nations, including the United States, the European Union, Canada and Japan, are overcoming most hurdles toward an agreement in mid-December when trade ministers gather in Geneva.

Other nations that could join the deal include China, Jordan and Ukraine.

"I bet on the fact that we'll strike a deal," Niggli told reporters at WTO headquarters.

To many governments, the incentive is that they can find cheaper ways to do business and come up with more money to repay debt, he said.

China's participation is a major attraction to other nations hoping to crack that enormous emerging market. But the negotiations have been under way for a decade, and Niggli said a major remaining obstacle is that the U.S. and Japan are each holding talks with the EU aimed at wringing the most possible concessions.

The deal takes aim at corruption and favoritism in government supply contracts -- typically 15 to 20 percent of a nation's gross domestic product. It would essentially update the WTO's only legally binding agreement on government procurement.

Niggli said the December meeting of trade ministers -- the last one was in 2009 -- will be something of a make-or-break session.

"If the negotiations are not concluded in December, the whole package will crumble," he told diplomats at the WTO according to a statement he later released to reporters. "The text will go stale and parties will come under pressure to withdraw concessions that have been put on the table."

The earlier WTO anti-corruption agreement on government contracting took effect in January 1996 and covered trade in a huge variety of goods, services and construction initially among 28 WTO member nations, ranging from drugs and high-tech computer items to machinery and building.

It generally applies to goods and services over $200,000 and construction projects starting at about $5 million.

Participation by WTO members is optional, trade officials say, though there's strong incentive to do so because it can help nations get a foothold into new markets by expanding the deal among 200 new ministries, government agencies and other entities.

A WTO study of the 42 nations' economies and some others, such as China and Brazil -- which hasn't shown an interest in joining the contracting deal -- says it could lead to anywhere from $380 billion to $970 billion a year in new market access.

"These market access gains will result in significant commercial opportunities for parties' suppliers, representing tens of billions of dollars or euros annually," Niggli said.

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GPA will give India access to $ 1.7 trillion procurement market

PTI

July 13,New Delhi: With India evaluating pros and cons of joining the WTO's global procurement agreement (GPA), a senior official of the multilateral body today said being a part of the pact would give New Delhi access to about $ 1.7 trillion procurement market.

Currently, India has an observer status in this plurilateral pact. The GPA, which is a legally binding agreement in the WTO, sets fair rules for public purchases. Members to the agreement open their markets only to fellow signatories - rather than to all WTO members.

Speaking at an Assocham function here, WTO Secretariat Deputy Director Harsha V Singh said WTO's GPA provides a guarantee of access to foreign procurement markets for goods and services.

"...it (India) is trying to see for itself how things are functioning. It is going through a detailed and intensive evaluation of the pros and cons of being a member," Singh said.

The observer status gives India an insight into how governments of developed countries place multi-billion procurement orders with the industry.

But it does not mean that India is under an obligation to subject its approximately $ 125 billion government purchases to the WTO rules.

India has a big market in which foreign companies are willing to offer their goods and services.
"...by joining that agreement, you give signal to rest of the world of a willingness to give stability, predictability and creditability to the system which you have adopted. That becomes very important," he added.

Singh hoped India would reach some kind of conclusion after its own internal assessment and taking feedback from its stakeholders.

Referring to India's Public Procurement Bill, which was approved by the Cabinet, he said: "Since India is going to implement these principles (like good governance etc) through this legislation...becoming a member of the WTO's GPA would be a positive step in reforming the procurement regime, making it more open and transparent".

At present, 42 WTO members are signatories to GPA. Developed countries, most of which are members of GPA, want India to sign the GPA under the WTO.

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