

# Procurement policy needs to cover more ground

A 22-page notification was issued by the Department of Expenditure, Ministry of Finance, on October 29, 2021. It was titled “General Instructions on Procurement and Project Management”, which is an innocuous one. There was no announcement on this by the prime minister or finance minister. Very few in the media and business circles even took notice of this. All Central government entities were routinely informed, and the document was quietly hosted on the ministry website.

The Infratalk in *Business Standard* of December 7, 2021, highlighted that it was one of the most significant reforms in independent India and heralded a bold new era in public procurement. Even thereafter, discussion on the subject with the media and concerned businessmen drew a look of incredulity. Could such sweeping changes indeed have been announced? It was finally the highlighting of this hitherto “below-the-radar” reform in the finance minister’s Budget speech on February 1, 2022, that caught the public’s attention.

Let us take a look at the key provisions, which are directed at “works and non-consultancy services”.

It mandates that payments of not less than 75 per cent of eligible running-account bills be made within 10 working days of the submission of a bill. The remaining payment is to be made within 28 working days of the submission of the bill. The final bill should also be paid to the contractor within three months of the completion of work. A paperless, online e-Bill System is to be launched for use by all central ministries for their procurements to enable suppliers and contractors to submit online their digitally signed bills and claims and track their status from anywhere. In cases where a ministry or a department has challenged an arbitral award and lost, 75 per cent of the arbitral award shall be paid immediately against a bank guarantee (BG).

The notification has opened up the QCBS (Quality and Cost-Based Selection) route for projects declared to be QOP (Quality-Oriented Procurement) by a competent authority. The maximum weighting of the non-

financial bid parameter is not to exceed 30 per cent.

So, finally, the much-criticised L1 (Lowest Cost Winner) framework has been sought to be dismantled! The most important task is to now get the states on board. The current notification applies only to Central government entities whereas states account for almost 60 per cent of all public works. It is also a mandate that various chambers of commerce and industry associations must take upon themselves and engage with states.

Next in importance is to get “goods” included. Goods are not standard commodities anymore. From robots to drones, public agencies are procuring technically sophisticated items, and public procurement policy must recognise this and enable a QCBS-type bidding format.

Further, international QCBS formats, such as those of the World Bank, go up to a ratio of 80:20 technical:financial scores. The 30 per cent limit for the technical score needs to be enhanced to 80 per cent. This provision, obviously, needs to be used with discretion whenever works contracts are technically complex, as for example road and rail projects requiring deep tunnelling through mountains. If quality is in focus now, the scourge of “irrational bidding” by the private sector

needs to be eliminated either through statistical measures or enabling discretionary judgement. Such discretionary calls, as well as invoking the 30:70 QCBS format, involves subjective judgement. These can always be questioned, and bureaucrats involved in such processes need to be protected from all future investigations.

If “irrational bidding” is a private sector disease, then arbitrary encashing of BGs and threatening blacklisting are notorious practices of public agencies. The guidelines need to elaborate on acceptable practices in these two areas.

Another major debilitating factor is that there is no accountability for adhering to some defined time limit for processing bids. Multiple postponements are done in a cavalier manner. This leads to serious frustrations in bidding, liquidity blocked in EMDs

(earnest money deposits) and BGs, and escalations of material prices used for bid costing. The sanctity of a bid process must be preserved with an outer time limit for completion.

Further, price escalation formulae provided in current works-contract documents are not suitable to cover non-routine increases in prices of basic materials for construction and need to be addressed. The pain of civil contractors executing government projects in the here and now is there for everybody to see.

“Independent engineers” is a crucial institutional requirement and needs attention. They are expected to check progress, quality, and expenditure. In the current system, the contractor pays them! This is ridiculous. The procuring agency should directly hire and remunerate its independent engineers.

Swiss Challenge is an accepted format for public procurement in many countries where an unsolicited bid is processed by public authorities, for a non-standard public utility project. In a variation of the theme, a Swiss Auction is where the public procurement authorities go ahead to invite better bids from entities that had hitherto stayed away from an auction process. Both these situations are emerging in India, and an acceptable policy framework is needed to mainstream them.

The most authoritative aspect of the current notification is that its provisions are now part of the General Financial Rules of the Union of India. This has set the cat among the pigeons in the finance departments of Central government procuring entities, because violations will now invite censure from the Comptroller and Auditor General (CAG) and Central Vigilance Commission. While it is expected that this CAG audit process will gradually bring in the required compliances, it is a lengthy process. For immediate impact, the policy needs to establish a procedure of “consequence management” for non-compliant behaviour, and for frivolous attempts to bypass the provision by finding loopholes.

With all these addressed, public procurement in India is set for a historic positive shift.



## INFRATALK

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