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Government Procurement in India

The Case of PSUs in the Light of WTO Procurement Agreements

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ABSTRACT

The government procurement comprises a substantial amount of total procurement for every economy in the recent years. In light of the present procurement market and existing structure, this study throws a light on the evolving amount of the procurement by the Indian PSUs in recent years in the light of the WTO agreements. Though there is some degree of uncertainty and difficulties in the exact size and the pattern of procurement by these PSUs, but the study finds a voluminous increase in the awarded contract value in the last three years. With the use of the official database of the Maharatna and the Navratna companies and PROWESS database, the procurement under broad utilities groups for 185 PSUs shows that the utilities and services groups stands highest followed by the manufacturing, extraction and the oil sector companies. The PSUs under the Maharatna/ Navratna category contribute a substantial proportion to the total procurement as evident from the findings.

Key Words: *Procurement, PSUs, WTO, Maharatna, Navaratna*

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I. Introduction

Procurement is a vital part of the government operations for every economy. The procurement policies in general provide support in achieving the long term objectives and the aspirations of the country. It is one of a number of mechanisms which could be used to deliver government policy. Be it the developed or the developing country, the government is one of the largest purchaser of goods and services in most of the countries. The procurement of products and services by government agencies for their own purposes represents an important share of total government expenditure and thus has a significant role in domestic economies. It has a considerable economic significance at both the domestic and international levels, accounting for a significant proportion of national GDP. Government procurement markets represent huge amounts which are estimated at several trillions of dollars in commercial transactions every year even though precise estimates are hard to come by. The Centre for

International Development¹, Harvard University, reveals that the Government Procurement of goods and services typically accounts for 10-15% of GDP for developed countries, and up to as much as 20% of GDP for developing countries. An analysis by the OECD indicates that total central government expenditures of its members, excluding military spending and the compensation of state employees, was just under \$2 trillion in 1998.

It is imperative to say from these figures and speculations that the public procurement constitutes an important part in every government, be it developed or developing. While the public procurement in most of the developed countries takes place within a framework of international obligations, such as the World Trade Organisation's Agreement on Government Procurement or the Procurement Directives made under regional agreements such as

¹Summary of Government Procurement, The Global Trade Negotiations division, Harvard University (2010).



the European Union or the North America Free Trade Agreement, for developing countries, such international standards/guidelines of government procurement procedures is not yet acknowledged widely. Even some developing countries retained a procurement system that differed little from that of the existing colonial days. However, in recent years, the impetus for reform has seen many developing countries are opening their doors of procurement procedure at the international market to get access to better alternatives. On the other hand it is argued that there is a considerable discrimination against foreign suppliers in national procurement markets. Study by Francois et al. (1997) shows this margin ranges from 13-50% for leading OECD nations across a wide range of government purchases. If this discrimination is noticed in the developed countries then it raises the following broad questions amongst the developing countries – first, how far the GPA agreement provide a transparent and non-discrimination treatment to the developing countries in the developed country? Second, how does a developing country like India compete in GPA signatory countries mainly where it faces a steep competition from the presence of many developed nations? Third, what will be the size of market access by Indian suppliers and what volume of market will be open for the international competition? Keeping all these questions in mind the present study makes a broad estimation of the value of government procurement at the central level by Indian Public Sector Units (PSUs) in recent years. To make a systematic study in this regard, the present study is broadly organised as follows. The second section gives a broad overview of the GPA under WTO rule. The third section touches the existing practices of procurement in Indian context. The last section estimates the procurement volume under different utilities groups by the Indian PUSs and concludes the findings.

II. GPA in WTO: A brief Overview

Government procurement is of great importance to international trade flows which attracts interest to both the foreign and the domestic suppliers. In this respect, the principle of transparency, fair and effective competition is of great importance in the international context. Nonetheless, in the past, the importance of government procurement has been excluded from the application of the main multilateral trade rules under the GATT and the WTO. However, over the years, the members of the GATT and WTO have tried to address the issues of government procurement in a multilateral trading agreement that finally resulted in the evolution of three main areas.

First, the plurilateral² agreement on government procurement termed as GPA

Second, negotiations on government procurement in services

And third, the work on transparency in government procurement

Based on the work on the above three areas, a few WTO members signed the plurilateral (only binding to WTO members who choose to sign) agreement on Government Procurement at the Uruguay Round in 1994. The agreement was primarily based on the 1979 Tokyo Round government procurement agreement. The prime intention of this agreement is based on the principles of openness, transparency and non-discrimination, which apply to Parties' procurement covered by the Agreement, to the benefit of Parties and their suppliers, goods and services. The GPA establishes a framework of rights and obligations regarding the national procurement laws, regulations, and procedures of parties. Government are required to apply the principle of national treatment to the products, services, and suppliers of other parties to the GPA and to abide by the most favoured nations (MFN) rule (not to discriminate among goods, services, and suppliers of other parties). The initial step in establishing this "non-discrimination" was to create a working group at the 1996 Ministerial Conference in Singapore to investigate government procurement transparency. The Working Group on Transparency in Government Procurement examines questions such as: does a particular government publish the criteria upon which it bases its procurement decisions? Does it publish the opportunities for procurement so that all suppliers know about them? Does it encourage competition among potential suppliers?

The documents of the agreement on government procurement have been revised several times in the general council committee. Both the reports dated 11th December 2006 and the 13th December 2010 revised mainly the coverage, scope, general principle, transparency, treatment, disclosure of information, consultations and dispute settlement in order to attract more countries, particularly developing and less developed to the agreement. It has particularly liberalised some of the principles or the developing and the least developed countries to attract their accession to the GPA.

²The WTO Agreement on Government Procurement (GPA) is a "plurilateral" agreement, which means that it applies to a number of WTO Members, but not all Members.

The membership to this agreement is currently limited to 41 WTO Members that specifically signed the GPA or that have subsequently acceded to the Agreement. This includes Canada, the EU (its 27 member states), Japan and the United States. The rest of the signatories are predominantly the developed countries. India joins 22 WTO members with observer status. A further nine countries, including China, are already negotiating full membership. China, like many other states, promised to become part of the agreement when it joined the WTO.

III. India and the GPA

Many parties have been bound by the Agreement since its entry into force on 1 January 1996. For some, it entered into force at a later date. Some Parties have joined the Agreement by way of accession³. Many countries, particularly developing countries are still the observer in the agreement. Even though the parties to the agreement have agreed to give some special consideration to the development, financial and trade needs of the developing and least developed countries but still many developing countries have not acceded to the agreement. India is not a member of the WTO agreement on government procurement and has so far resisted the attempts by the developed countries like the US and European Union to subject Indian state purchases to the multilateral binding rules. However, India has acquired the status of an observer in the government procurement since February 2010. The observer status would allow India to participate in the discussions of the meetings and follow the proceedings of the WTO Committee on Government Procurement. This would help India in obtaining a greater understanding of the global market in Government Procurement and the rules and regulations governing the market access issues.

IV. Government Procurement Practice in India

India has a federal constitution, with the responsibility for governance between the central and state governments. The Union List, the State List, and the Concurrent List in the Indian Constitution govern the legislative functions of the central, union and state governments. The Public Procurement is performed through Government policies. The subject is primarily covered by: the General Financial Rules

³The accession process starts with the submission of an application for accession and has two main aspects: the verification of the acceding Member's procurement legislation as regards compliance with the GPA, and negotiations between the acceding Member and Parties on the former's coverage offer.

1963, framed by the Ministry of Finance by executive order, and the delegation of Financial Powers Rules 1978 (again framed by the said Ministry). Further, the Directorate General of Supplies & Disposals (DGS&D) Manual on Procurement and the Central Vigilance Commission (CVC) Guidelines prescribe the procurement procedure to be followed by all central ministries. In furtherance to these Rules, in August 2006 the Central Government, through the Ministry of Finance carried out a detailed exercise and issued three Manuals providing for procurement of Goods, Works and Services. These Manuals are meant to be guidelines to the Government Ministries / Department / Public Sector Undertakings (PSUs).

Every Ministry/ Department/ PSUs spends a sizeable amount of its budget for purchasing various types of goods to discharge the duties and responsibilities assigned to it. These purchases are made following a uniform, systematic, efficient and cost effective procedure, in accordance with the relevant rules and regulations of the Government. The Ministries / Departments/PSUs have been delegated powers to make their own arrangements for procurement of goods under the Delegation of Financial Power Rules, which have to be exercised in conformity with the orders and guidelines issued by competent authorities' coverings financial, vigilance, security, safety, countertrade and other regulatory aspects. Of the various procurements by several ministries/ departments and PSUs, the present study concentrates the procurement volume by the PSUs.

V. The Procurement volume by PSUs: An Estimation

The PSUs constitute a significant proportion of the total procurement of the government of India. Even though there is no clear estimated record on the total volume of procurement by the Indian PSUs, this section attempted to find the total volume by adopting some procedure which is discussed in subsequent stages. Looking at the difficulties in obtaining procurement data for all PSUs, the study is carried out in two different phases. First, the total number of PSUs is divided in two broad sub-groups viz.; the Maharatnas/ Navratnas and the rest of PSUs (other than Maharatnas/ Navratnas). Based on the record of the latest Public Enterprises Survey, there are 243 PSUs in India of which 20 PSUs are categorised under the Maharatnas/ Navratnas.

The next stage involves the extraction of data for these Maharatnas/ Navratnas companies from their respective web portal. Majority of PSU's official web-pages documents the current and past tenders/tender notice and the tender awarded to the

parties. The present study considers the awarded tenders of each PSUs. However, the compilation of data from each official site of the Maharatnas/ Navratnas companies is not an easy task. This is mainly because of the lack of information in the reported data by some of the PSUs. Each Maharatnas/ Navratnas company has adopted its own procedures of reporting of procurement data and many have not provided a systematic record of data for every month. Looking at these difficulties the present compilation has initially taken the data for the latest three years viz. 2009, 2010 and 2011. It is seen that the year 2010 is more accurate in terms of data availability as majority of Maharatnas/ Navratnas companies have reported the data for each month. However, the year 2009 shows many discrepancies in the reported data and the months covered. Similarly, the year 2011 data does not show a standardised data for each reported month. It is observed that for all three years, some of the data could not be incorporated in our analysis since a part of the figure (numeric number) was missing⁴. There is also reporting of unexpected procurement figures which prima facie are wrong. This forced us to exclude such data from our compilation. The non-reporting of the awarded tenders and the difficulties in extracting the data for some of the PSU's have forced us to take the data for fifteen Maharatnas/ Navratnas companies. The Maharatnas/ Navratnas companies whose awarded tender data could not be compiled from their webpage are namely, Indian Oil Corporation, Bharat Electronics Limited, Bharat Heavy Electricals Limited, NMDC Limited and Power Finance Corporation Limited. Table-1 gives the compiled figures of the total number and amount of tender awarded by each Maharatnas/ Navratnas companies during the last three years. The problem related to each companies awarded data is given in the notes of the table-1.

From table-1 it is clear that the combined figure of number of contracts awarded and its value is highest during the year 2010 compared to other years considered in our study. This is primarily because during the year 2010, majority of the awarded contracts are reported by the Maharatnas/ Navratnas companies leading to a better month wise coverage. Looking at the coverage of contracts awarded during the year 2010 we projected the total contract value of

⁴This is because some of the companies have produced the scanned copy of the awarded tender data in their webpage. It is very difficult to get the exact amount of the contract value (as some part of the contact value is missing) because of the uploading of the poor scanned copy.

the rest of the PSUs (including the rest five Maharatnas/ Navratnas). The projection is done only for the year 2010 and the rest two years are excluded in order to find a figure that is close to the true procurement of PSUs combined together. In order to make an approximation of the total contracts awarded by the PSUs, the study is undertaken in the following format.

First, the Maharatnas'/ Navratnas' companies are classified into broad utility groups namely, manufacturing, utility and services, oil and extraction. Second, after finding the amount of procurement (tender awarded) under each subgroup⁵ for the year 2010, the estimation of average procurement is found by the ratio of tender awarded to the sales of the Navratnas'/ Maharatnas' sales of the companies, i.e. the finding shows the average amount of sales for each unit of procurement / tender awarded. This is as follows-

$$= \frac{\text{Sum of total awarded tender value in the subgroup}}{\text{Total sales by the subgroups}}$$

The sales figure of each Navratnas'/ Maharatnas' and other PSUs are obtained from the PROWESS dataset.

After assessing the average sales per unit procurement in Navratnas'/ Maharatnas', the procurement figure for the rest of the PSUs is extrapolated by an approximation based on the sales of the rest of the PSUs. The PROWESS dataset is used to find out the sales of each central PSUs. However, due to the non-availability of balance sheet of some of the PSUs the present study could not collect the sales figure of all the rest of central PSUs from the PROWESS dataset. In order to avoid the non-exclusion of some of the central PSUs which may be operational but not reported in PROWESS, we looked at their respective webpage and also the Stock Exchange Official Directory. In this process the study could minimise the exclusion of sample and finally rested on 185 central PSUs (including the Navratnas'/ Maharatnas') for our analysis.

The procurement of the rest of the PSUs is estimated by the following formulae –

⁵ Coal India limited and ONGC is taken in Extraction group.

Hindustan Aeronautics Ltd., NALCO, NTPC Ltd., Rashtriya Ispat Nigam Ltd. (Vizag. Steel plant) and SAIL are taken in manufacturing subgroups. BPCL, GAIL, HPCL and Oil India Ltd. are taken in Oil sub-sector and MTNL, Power Grid Corp., Rural Electrification and Shipping Corp. of India are considered under utilities and services subgroups.

$$= \left(\frac{\text{Sum of total awarded value in the subgroup}}{\text{Total sales by the subgroups}} \right)$$

× Sum of sales of rest PSUs under the subgroups

Estimation by this would give an approximation of the total procurement value in each subgroup which is given in table-3. However, the projection did not estimate the number of transactions and the transactions value above one crore as there is no base for estimating these parameters. The total amount of procurement for all PSU is given in table-4.

Based on the data, it is seen from table-3 and table-4 that the total amount of procurement by the Navratnas'/ Maharatnas' companies stood at US \$ 13.6 billion of which the contract value above one crore represents US \$ 13.2 billion. A very high figure of contracts above one crore can be explained under the ground that some Navratnas'/ Maharatnas' companies have reported the awarded tenders above one crore only. It is seen that approximately 18 percent of the contracts account for close to 97 percent of contracts by value. A disaggregated analysis of sub-sector PSUs shows- the awarded tenders by the manufacturing groups of Navratnas'/ Maharatnas' companies stood highest followed by extraction, utility and services. However, the extrapolation of contracts value amongst other PSUs (excluding the Navratnas'/ Maharatnas') shows that the utility and services PSUs procures the highest followed by extraction and manufacturing PSUs. The combined analysis shows that the total amount of procurement by all 185 PSUs for the year 2010 is approximately US \$ 58.7 billion, of which the utilities and services sectors is close to 63% of the total procurement.

It is evident from the procurement figure that the Indian PSUs procurement has reached a new height in the year 2010. At the disaggregated level the utilities and the services sector procurement is the highest for the entire PSUs followed by the manufacturing and the extraction group PSUs. Given the existing rate of growth of the economy, the public sector procurement will continue to grow in the years to come. Though there is no central legislation controlling the procurement in India, the broader guidelines and the legislation adopted by the states/ union territories have improved the efficiency of procurement over years. Given the growing nature of procurement of the PSUs, a central legislation should be enabled to ensure a transparent, fair and equitable treatment of suppliers and the promotion of competition in public procurement.

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Tables Used

Table-1: Awarded tender value of the Maharatnas/ Navratnas companies (Value in Rs. Billion)

| Name of PSUs | Total Number of transaction | | | Contract Value in the Period (in Billion Rs) | | | No. of Transaction Above 1 Cr. | | | Contract Value Above 1 crore (in Billion Rs.) | | |
|----------------------------|-----------------------------|--------|-------|--|--------------|-------|--------------------------------|-------|------|---|--------------|-------|
| | 2009 | 2010 | 2011 | 2009 | 2010 | 2011 | 2009 | 2010 | 2011 | 2009 | 2010 | 2011 |
| Maharatna Companies | | | | | | | | | | | | |
| ONGC | 765 | 2,962 | 1,278 | 107.6 | 189.2 | 104.9 | 163 | 658 | 259 | 105.6 | 181.6 | 101.5 |
| NTPC | 674 | 579 | 28 | 70.6 | 12.3 | 0.8 | 134 | 60 | 4 | 69.7 | 11.5 | 0.8 |
| Coal India | 13 | 96 | 54 | 0.4 | 12.7 | 15.6 | 1 | 50 | 41 | 0.4 | 12.7 | 15.6 |
| SAIL | 1,306 | 1,217 | 364 | 145.8 | 186.5 | 12.0 | 588 | 466 | 125 | 143.1 | 184.2 | 11.4 |
| Navratna Companies | | | | | | | | | | | | |
| HAL | 630 | 1,081 | 451 | 3.1 | 3.2 | 1.1 | 36 | 40 | 21 | 2.5 | 2.2 | 0.7 |
| BPCL | | 509 | 131 | 0.0 | 34.7 | 43.9 | | 289 | 77 | 0.0 | 33.3 | 4.2 |
| GAIL | | 143 | 53 | 0.0 | 32.5 | 7.6 | | 141 | 53 | 0.0 | 32.5 | 7.6 |
| MTNL | 123 | 75 | 22 | 2.7 | 9.2 | 0.2 | 29 | 36 | 3 | 2.5 | 9.1 | 0.1 |
| HPCL | 250 | 75 | 3 | 1.6 | 0.5 | 0.0 | 30 | 11 | 2 | 0.8 | 0.3 | 0.0 |
| NALCO | 140 | 91 | | 15.1 | 12.1 | 0.0 | 140 | 91 | | 15.1 | 12.1 | 0.0 |
| Oil India | | 266 | 407 | 0.0 | 6.1 | 4.0 | | 43 | 29 | 0.0 | 5.5 | 3.2 |
| Power Grid Corp | 92 | 91 | 30 | 58.2 | 60.6 | 27.6 | 92 | 91 | 30 | 58.2 | 60.6 | 27.6 |
| Rural Electrification | 8 | 6 | 1 | 0.0 | 0.0 | 0.0 | | 1 | | 0.0 | 0.0 | 0.0 |
| Shipping Corp | 47 | 63 | 15 | 8.6 | 38.4 | 29.4 | 39 | 45 | 11 | 8.6 | 38.3 | 29.4 |
| Vizag Steel | 153 | 6,088 | 1,039 | 2.1 | 24.4 | 3.1 | 51 | 498 | 37 | 1.8 | 19.3 | 2.6 |
| Total (In Rs. Billion) | 4,201 | 13,342 | 3,876 | 415.9 | 622.5 | 250.2 | 1,303 | 2,520 | 692 | 408.2 | 603.2 | 204.6 |
| Total (In US \$ Billions) | 4,201 | 13,342 | 3,876 | 9.1 | 13. | 5.5 | 1,303 | 2,520 | 692 | 8.9 | 13. | 4.5 |

Source: Compiled from the respective webpage.

The exchange rate is based on the monthly average of 2010, taken from Pacific Exchange Rate Database.

Notes:

Red Contracts are excluded from our analysis

Coal India: The figure for 2009 shows the available awarded contracts during the period Sept to Dec. Similarly, there is no contract awarded figure shown during December-2010 and January 2011.

BPCL: The year 2011 is till the month of May, data for 2009 is not available

HAL: 2009 data is from April to December and for 2011, data is for the period January to May

GAIL: Data after May 2010 is reported in the website whereas data before May 2010 is not downloadable. For 2010, data includes from June to December. For 2011, data includes January to April

MTNL: About 184 Records (includes both Delhi and Mumbai units) are found where the nature of work and the awarded months are given. However, the amount is not mentioned, hence excluded from the analysis. About 12 records are found which mentions the contract value as Rs. 1. Similarly, 8 Records are found where the value of contract could not be converted to the actual amount. This is because only per unit price were given and the number of units are not given, hence excluded from the analysis.

MTNL: For 2011, data includes only two months viz. January and February

HPCL: For the year 2010, no tenders awarded figure is found in the month of May, June, September, November and December. Approximately 15 figures are excluded from the analysis due to the reporting of absurd/strange value.

NALCO: Only contracts above Rs. 2 crores is reported in the awarded contract section in the website

Oil India: Awarded tender data for the year 2010 includes June to December and 2011 includes January to May 2011.

Power Grid: All contracts are above Rs. 3 crores.

Rural Electrification: Data is available for few months, in many cases date and value was missing.

ONGC: For 2009 the months includes only Oct, Nov and Dec. Similarly the value of 2011 is till the month of April.

Table-2: Comparison of Procurement (tender awarded) with the sales of the respective subgroups for the year 2010.

| Categories | Navratnas'/ Maharatnas' Companies | | | | |
|---|-----------------------------------|---------------|----------|------------------------|------------|
| | Extraction | Manufacturing | Oil | Utilities and Services | Total |
| No of PSU | 2 | 5 | 4 | 4 | 15 |
| Total Sales | 63095 | 118165 | 282566 | 14428 | 478254 |
| No. of Transaction | 3,058 | 9,056 | 993 | 235 | 13342 |
| Contract Value (in Rs. Billion) | 202 (4.4) | 239 (5.2) | 74 (1.6) | 108 (2.4) | 623 (13.6) |
| No. of Transaction > 1 Cr. | 708 | 1,155 | 484 | 173 | 2520 |
| Contract Value > 1 Cr. (in Rs. Billion) | 194 (4.2) | 229 (5.0) | 72 (1.6) | 108 (2.4) | 603 (13.2) |

Source: Same as table-1.

Notes: Same as table-1. Figures in parentheses shows the value in US\$ billion.

Table-3: Procurement value of the rest of the PSUs (other than Navratnas'/ Maharatnas') in their respective subgroups.

| Categories | Other PSUs | | | | |
|------------------------------------|------------|---------------|--------|------------------------|------------|
| | Extraction | Manufacturing | Oil | Utilities and Services | Total |
| No of PSU | 19 | 83 | 5 | 63 | 170 |
| Total Sales | 63034 | 89342 | 369027 | 210778 | 732181 |
| Contract Value (in Rs. Billion) | 201.8 | 180.3 | 96.4 | 1580.2 | 2059 |
| Contract Value (in US \$ Billions) | 4.4 | 3.9 | 2.1 | 34.6 | 45 |

Source: Projected on using the Navratnas'/ Maharatnas' procurement figure.

Note: 1. the exchange rate is based on the monthly average of 2010, taken from Pacific Exchange Rate Database.

2. The total sales figure of the Oil companies is very high because of the inclusion of India Oil Corp. in the subgroup which is not included in the Navratnas'/ Maharatnas' group.

Table-4: Procurement of all PSUs (including Navratnas'/ Maharatnas') in their respective subgroups

| Categories | All PSUs | | | | |
|---------------------------------|------------|---------------|--------|------------------------|------------|
| | Extraction | Manufacturing | Oil | Utilities and Services | Total |
| No of PSU | 21 | 88 | 9 | 67 | 185 |
| Total Sales | 126129 | 207508 | 651593 | 225206 | 1210435 |
| Contract Value (in Rs. Billion) | 404 | 419 | 170 | 1,688 | 2681 |
| Contract Value (in \$ Billions) | 8.8 | 9.2 | 3.7 | 37.0 | 58 |

Source: Projected on using the Navratnas'/ Maharatnas' procurement figure.

Note: The exchange rate is based on the monthly average of 2010, taken from Pacific Exchange Rate Database.