

# Defence Procurements : Need for Independent Oversight

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Every major defence deal has been put to public and media scrutiny in the recent past, generally with adverse fallout. Numerous aspersions have been cast directly or indirectly. Almost all major deals have been referred to enquiry commissions or investigative agencies. Extensive media coverage, both informed and uninformed, has fuelled doubts about the probity of the whole procurement regime.

The above state of affairs has had a highly debilitating influence on the modernisation of the armed forces. Some other discernible effects are as follows:-

(a) There is a perceptible lack of faith in the uprightness of the whole system. People appear to be convinced that all defence deals are tainted and view all procurement functionaries to be lacking in required integrity. This has come to affect national morale, wherein a degree of despondency and resignation has set in.

(b) As all procurement activities come to be viewed with suspicion, functionaries become wary of taking decisions. Deferring decision making is considered a more intelligent course of action than having one's integrity questioned later on. Hence, the whole procurement process suffers due to delays and vacillation at various levels.

(c) The environment gets vitiated to the extent that vendors feel compelled to factor in illegal commissions in their commercial quotes, under the mistaken belief that they would lose out unless they resort to such practices.

(d) Reputation of many upright leaders and functionaries gets tarnished with adverse media reporting, based on conjectures and stories planted by losing vendors.

(e) And most seriously, troops tend to lose faith in the leadership. They wonder if the equipment being procured meets

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qualitative parameters or they are being saddled with sub-standard or unreliable hardware that may fail them in war.

### Major Initiatives Taken

The Government is seized of the matter and has initiated major steps to overhaul and strengthen the complete procurement procedure. Defence Procurement Procedure - 2006 (DPP-2006) is an extremely comprehensive document. It is perhaps the only document of its kind in the whole world that covers the complete gamut of all procurement activities. The Government's intent to infuse transparency and impartiality is clearly discernible in various provisions of the procedure. With a view to generating competition, tenders are now issued to a much larger number of vendors. Formulation of qualitative requirements has been made more broad-based to widen vendor participation. Two-bid system has been adopted to prevent subsequent raising of commercial quotes by successful vendors.

In a bold move, vendors have been permitted to attend field trials of their equipment and results are conveyed to them at the trial site itself. Price negotiations have been eliminated in competitive bids. Single-vendor procurements have been minimised to the barest inescapable ones. And finally, an innovative *Integrity Pact* has been introduced for all high-value contracts.

### Pre-Contract Integrity Pact

As per DPP-2006, 'Pre-Contract Integrity Pact' would be signed between government department and the bidders for all procurement schemes over Rs 100 crores. It is a highly laudable step. It is a binding agreement between the Government procurement agency (buyer) and the vendors (bidders). Salient features of the Pre-Contract Integrity Pact are as follows:-

- (a) The buyer undertakes that no official of the buyer will demand or accept any bribe, directly or through intermediaries.
- (b) The bidder undertakes not to offer, directly or through intermediaries, any bribe, commission or inducement to any official of the buyer.
- (c) The bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.



(d) The buyer will appoint independent monitors for this Pact, in consultation with the Central Vigilance Commission (CVC). As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Head of the Acquisition Wing.

(e) The following set of sanctions can be imposed by the buyer for any violation by a bidder: -

- (i) Denial or loss of contract.
- (ii) Forfeiture of the bid security and performance bond.
- (iii) Liability for damages to the principal and the competing bidders.
- (iv) Debarring for an appropriate period of time.

(f) The decision of the buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the bidder shall be final and binding on the bidder. However, the bidder can approach the monitor(s).

### **Deficiencies in the Integrity Pact**

Though well intended, the Integrity Pact appears to have been incorporated in a hurry. Some of the major infirmities are discussed in the succeeding paragraphs.

### **Limited Applicability**

*Integrity Pact* is required only in cases where the contract value is above Rs 100 crores. Interestingly, most of the contracts signed normally are of value less than Rs 100 crores. For example, a total of 123 contracts were signed in the wake of the Kargil War and their gross value was Rs 2163.09 crores. Almost all of them were less than Rs 100 crores. The much publicised casket contract was for under Rs 6 crores. Contract with Denel for anti-material rifles and ammunition was for Rs 23.22 crores (Denel has since been debarred for using undue influence).

It will thus be seen that the newly introduced *Integrity Pact* will apply to a handful of big ticket contracts only. Majority of procurements cases will stay outside its purview. It is an odd provision and conveys an impression that it is not essential to ensure integrity in cases of lesser value.



## **Pact is Loaded against Bidders**

The *Integrity Pact* is between the buyer and the bidder. But all the provisions are loaded against the bidder. The bidder has to give numerous undertakings and also agree to accept sanctions as imposed by the buyer. Interestingly, it is for the buyer to decide that a breach of *Integrity Pact* has taken place. On the other hand, the buyer undertakes to initiate disciplinary criminal proceedings against his defaulting officers. It is an infructuous undertaking. Even under the existing criminal laws in force and service rules, the Government is duty bound to initiate action against delinquent officials, even for lesser value contracts which are not covered by the Pact.

## **Ineffective Independent Monitors**

Independent Monitor will be nominated by the buyer on case to case basis, albeit in consultation with CVC. In all probability, it would be a well connected bureaucrat seeking post retirement rehabilitation. He will neither be independent nor, effective as it will be prudent for him to remain 'amenable' to secure repeat assignments. Additionally, the role assigned to him is totally imprecise and perfunctory. He is required to inform Director General Acquisition (the buyer) if he notices, or believes to notice, a violation of this agreement. It is for the buyer to proceed as deemed fit. As there is no mention of his functioning, it is a matter of speculation as to how a monitor shall detect violations.

Another interesting aspect relates to the power given to the buyer to rule that the bidder has violated provisions of the Pact. Such a decision is 'final and binding'. The Pact, however, permits the aggrieved bidder to approach the Monitor. But there is no mention as to what the Monitor can do when the decision of the buyer is already 'final and binding'.

## **Lack of Complaint Redressal Mechanism**

No arrangement can be credible unless an effective and prompt complaint redressal mechanism is put in place. The *Integrity Pact* has overlooked this critical requirement totally. An aggrieved bidder has to report the matter to the buyer 'with full and verifiable facts'. Thereafter, it is for the buyer to initiate action against the accused official for alleged misdemeanour. The Pact is totally silent as regards dispensation of justice to the wronged bidder.



Every pact has to have an independent adjudicator to resolve disputes between the contracting parties after hearing both sides. However, in the Integrity Pact this authority has been abrogated by the buyer to himself. Such an arrangement dilutes the value of the Pact and makes it appear as a pretense rather than a serious attempt to promote probity.

### **Necessity of a Credible Probity Assurance Mechanism**

The primary aim of the government should be to convince the nation that it is serious about ensuring probity in defence procurements and restore people's faith in the system. As has been discussed earlier, India needs an arrangement with the following essential imperatives:-

- (a) Ensure probity and uprightness in all defence procurements of capital nature, irrespective of their value. The system should be acknowledged by all to be transparent and principled.
- (b) Dealing officials should fear punitive provisions for their subjective decisions.
- (c) Bidders should have total confidence in the fairness of the system and should be convinced that their competitors would draw no inequitable benefit, even if they attempt to resort to iniquitous practices.
- (d) Aggrieved parties should be able to get redressal speedily.
- (e) The armed forces must feel confident of the quality of weapon systems provided to them.

The recently introduced Integrity Pact falls woefully short on all counts and the probity of defence procurements will continue to remain suspect.

### **Defence Procurements Oversight Commission**

India needs an oversight system which enjoys the confidence of all and which acts as a watchdog. India should set up a Defence Procurements Oversight Commission (DPOC). It should be a semi-judicial ombudsman and be of permanent nature.

## Constitution

DPOC should consist of a Chairman and three members : Technical, Commercial and Legal. They should be selected by a committee consisting of the Defence Minister, Leader of the Opposition and a sitting judge of the Supreme Court. As the entire success of this mechanism depends on the credibility enjoyed by the Commission, all politically aligned personnel must be scrupulously kept away.

The Chairman should be a retired judge of the Supreme Court. He should be a man of impeccable reputation and standing. His name should invoke respect and confidence. All members of the Commission should have a fixed tenure of five years. Member Technical should be a retired service officer with experience in defence procurements. Member Commercial should be an economist of repute from academic field or an expert from private financial sector. And Member Legal should be a specialist in contract management and international trade. It will be prudent not to have retired bureaucrats, as their erstwhile long association with the Government may compromise their independence in the eyes of the people.

## Role

DPOC will perform three major roles:-

(a) **Monitoring Functions.** It will monitor and oversee that all procurement activities from evolution of parameters to post-contract implementation are carried out as per the laid down procedures and in the true spirit of the Integrity Pact. It can ask for any file and attend any meeting being held between the buyer and the bidders to keep itself abreast of the developments. On noticing any violation by either party, it could take immediate remedial measures to correct the infirmity. Such a timely intervention will prevent the whole process getting vitiated beyond redemption.

(b) **Advisory Functions.** The Commission can be of immense help in rendering pre-activity independent advice to the buyer. Presently, the Ministry of Defence is devoid of any pre-audit advice. It has been requesting that either CVC or any other statutory body should render probity advice to it before a contract



is signed. DPOC will fulfill this need ideally. When in doubt about the correctness of an intended action, the buyer can approach the Commission for advice. Such an arrangement will help officials take well-considered decisions without vacillation.

(c) **Adjudicatory Functions.** Both sides (the buyer and the bidders) should be permitted to bring violation of the Integrity Pact to the Commission's notice. It should be for the Commission to seek full details and carry out its assessment of the issues involved. However, adjudicatory proceedings should not impinge upon the normal progress of the case. Depending on the gravity of the violation, the Commission could either, call involved parties to reconcile differences or, suggest remedial action. The power to recommend action against delinquent official or imposition of sanctions on defaulting bidder(s) should rest with the Commission which should send its report to the Defence Minister. The Commission may even recommend abrogation of a procurement proposal, if it suffers from major irregularities.

### **Reporting Channel**

DPOC should submit its reports to the Parliamentary Committee on Defence through the Defence Minister.

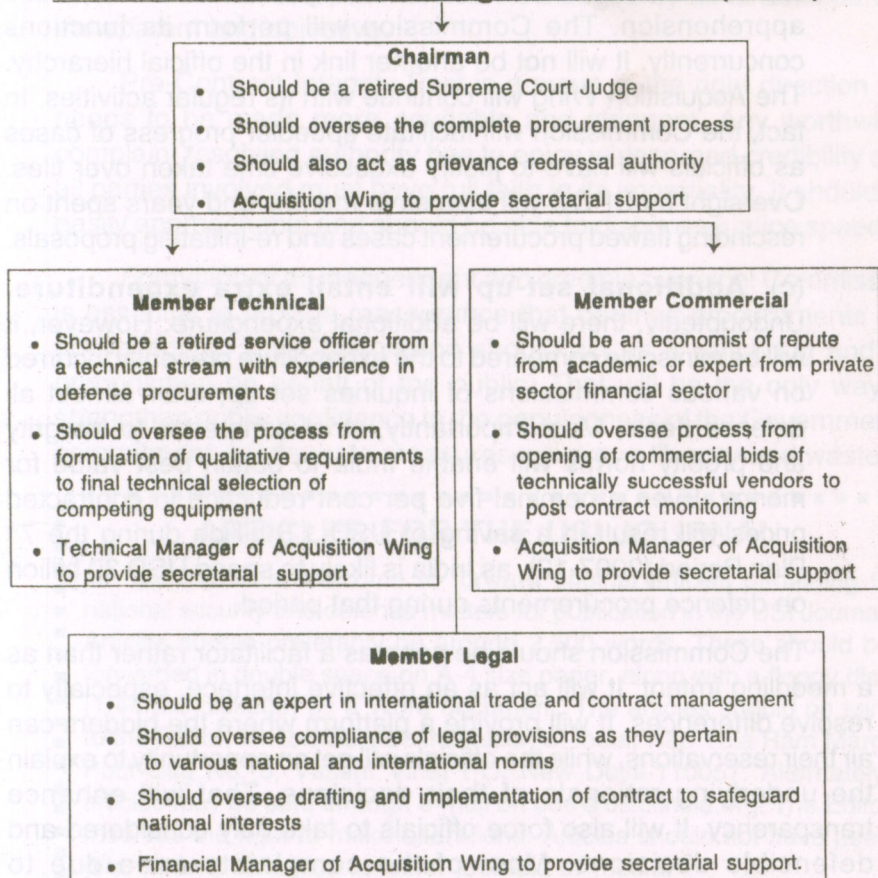
### **Functioning**

DPOC is not intended to be a super Acquisition Wing. It must not interfere in routine procurement functions and decision making. Procurement officials should never feel constrained and curtailed. They must have full freedom of action.

The Commission should generally stay out of allocation of priorities to various proposals, acceptance of necessity and quantity vetting. Its interest in the formulation of parameters should be restricted to ensuring that they are broad based and not any vendor-specific. Similarly, it should leave the modalities of field trials to the Services. Ideally, the Commission should place itself as an advisory and protective body to save the officials from subsequent harassment for decisions taken in good faith. The current provision for technical oversight by an independent committee in respect of contracts of value above Rs 300 crores should be dispensed with.



## Defence Procurements Oversight Commission (DPOC)



### **Likely Opposition**

The opposition to the constitution of DPOC should not be underestimated. It will be strident and vehement. Change is the very anti-thesis of bureaucratic inertia. Additionally, old mindsets and intellectual apathy spawn numerous arguments to stress non-viability of all new ideas. Opposition to DPOC is anticipated on the following counts:-

- (a) **It will curb freedom of officials.** On the contrary, the presence of the Commission will embolden the officials as they would know that they have a protective shield of the Commission to vouchsafe their conduct. Additionally, when in doubt the officials can seek guidance from the Commission in complex cases.



(b) **Additional tier will cause delays.** This is a misplaced apprehension. The Commission will perform its functions concurrently. It will not be another link in the official hierarchy. The Acquisition Wing will continue with its regular activities. In fact, the Commission will facilitate speedier progress of cases as officials will have to justify excessive time taken over files. Oversight by DPOC will also save months and years spent on rescinding flawed procurement cases and re-initiating proposals.

(c) **Additional set-up will entail extra expenditure.** Undoubtedly, there will be additional expenditure. However, it will be miniscule compared to the expenditure presently incurred on various commissions of inquiries set up, after almost all defence deals. Most importantly, strict adherence to integrity and probity norms will enable India to obtain best value for money. Even a nominal five per cent reduction in contracted prices will result in a saving of USD 1.5 billion during the 7<sup>th</sup> Plan Period (2007-12), as India is likely to spend USD 30 billion on defence procurements during that period.

The Commission should be seen as a facilitator rather than as a meddling irritant. It will act as an effective interface, especially to resolve differences. It will provide a platform where the bidders can air their reservations, while the officials will get an opportunity to explain the underlying rationale of their decisions. That will enhance transparency. It will also force officials to take duly considered and defensible decisions. Most of the complaints arise due to misunderstandings and misapprehensions due to lack of effective communication.

## Conclusion

Regular questioning of the uprightness of Indian defence procurements has caused immense damage to the national psyche and the morale of the armed forces. Media has been highlighting irregularities and creating doubts about the sanctity of the complete procurement process. Another fall-out has been tardy modernisation of the armed forces. It is an extremely grave situation and requires drastic steps.

The Government has taken a number of commendable measures. But the people continue to be skeptical. Therefore, the government needs not only to ensure probity but also, and may be more importantly, convince the environment of its earnestness. The



system must be accepted and acknowledged by all to be impartial, transparent and objective.

Pre-Contract Integrity Pact is a move in the right direction but needs to be made more equitable and stringent. Any worthwhile complaint resolving authority has to enjoy widespread credibility and all parties involved must have full faith in its impartiality. It should be easily approachable and should be able to dispense justice speedily.

Formation of an independent and credible oversight Commission is essential to provide reassurance that defence procurements are above board. The Commission should act as a watchdog and an ombudsman on behalf of the public. That will be the only way to strengthen public confidence in the genuineness of the Government's commitment. Inadequate measures will prove illusory and wasteful.

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