



**UNODC**

United Nations Office on Drugs and Crime

# India: Probity in Public Procurement

Transparency, objectivity and competition in Public Private Partnership projects  
in line with the United Nations Convention against Corruption.

A Report





# India: Probity in Public Procurement

Transparency, objectivity and competition in Public Private Partnership projects in line with the United Nations Convention against Corruption.

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### **A report on:**

- Compliance of Indian laws and policies with the United Nations Convention against Corruption.
- Current practices, grassroot challenges and training needs required to strengthen compliance with the United Nations Convention against Corruption.

*This report can also be viewed at <http://www.unodc.org/southasia/en/menu/publication.html>*





## Contents

|                                                                                                                    |           |
|--------------------------------------------------------------------------------------------------------------------|-----------|
| <i>Acknowledgements</i> .....                                                                                      | 7         |
| <i>Acronyms</i> .....                                                                                              | 9         |
| 1. Executive Summary .....                                                                                         | 11        |
| 2. Introduction .....                                                                                              | 15        |
| 2.1. United Nations Convention against Corruption .....                                                            | 15        |
| 2.2. Approach and Methodology .....                                                                                | 17        |
| 3. Public Private Partnerships .....                                                                               | 19        |
| 3.1. What are public private partnership projects and how are they different from public procurement .....         | 19        |
| 3.2. Overview on the status of current legislation and compliance with UNCAC .....                                 | 22        |
| 3.3. Recommendation of Working Group participants on legislative aspects and practices linked to it .....          | 30        |
| 4. State Legislation .....                                                                                         | 32        |
| 4.1. Assessment of legislation and policy in the pilot state – Karnataka .....                                     | 34        |
| 5. Grassroot Challenges, Current Practices and Training needs .....                                                | 37        |
| 5.1. Responses from the survey analysis on grassroot challenges, current practices and training needs .....        | 38        |
| 6. Summary of Recommendations .....                                                                                | 63        |
| <b>Annexures:</b> .....                                                                                            | <b>69</b> |
| <i>Annexure 1:</i> List of legislation and policies reviewed .....                                                 | 71        |
| <i>Annexure 2:</i> Sample for base line survey on grassroot challenges, current practices and training needs ..... | 73        |
| <i>Annexure 3:</i> Questionnaire used for the survey with officials from private sector .....                      | 75        |
| <i>Annexure 4:</i> Questionnaire used for the survey with officials from government sector .....                   | 84        |
| <i>Annexure 5:</i> List of Working Group Participants – New Delhi & Bangalore .....                                | 93        |
| <i>Annexure 6:</i> Bibliography .....                                                                              | 98        |





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## Acronyms

|                  |                                                        |
|------------------|--------------------------------------------------------|
| <b>AAI</b>       | Airports Authority of India                            |
| <b>ADB</b>       | Asian Development Bank                                 |
| <b>AERO</b>      | Airport Economic Regulatory Authority                  |
| <b>BII</b>       | Business Integrity Index                               |
| <b>CAG</b>       | Comptroller and Auditor General                        |
| <b>CIC</b>       | Chief Information Commission                           |
| <b>CBI</b>       | Central Bureau of Investigation                        |
| <b>CII</b>       | Confederation of Indian Industry                       |
| <b>CrPC</b>      | Criminal Procedure Code, 1973                          |
| <b>CPR</b>       | Centre for Policy Research, New Delhi                  |
| <b>CVC</b>       | Central Vigilance Commission                           |
| <b>DF</b>        | Development Fees                                       |
| <b>DFPR</b>      | Delegated Financial Powers Rules                       |
| <b>DIAL</b>      | Delhi International Airport Limited                    |
| <b>E &amp; Y</b> | Ernst & Young, New Delhi                               |
| <b>FCPA</b>      | The US Foreign Corrupt Practices Act, 1977             |
| <b>FICCI</b>     | Federation of Chambers of Indian Commerce and Industry |
| <b>GFR</b>       | General Financial Rules, 2005                          |
| <b>GOI</b>       | Government of India                                    |
| <b>IGIA</b>      | Indira Gandhi International Airport                    |
| <b>INR</b>       | Indian Rupee                                           |
| <b>IP</b>        | Integrity Pact                                         |
| <b>IRDA</b>      | Industries Development and Regulation Act, 1951        |
| <b>ISO</b>       | International Organization for Standardization         |
| <b>JV</b>        | Joint Venture                                          |
| <b>KTPP</b>      | Karnataka Transparency in Public Procurement Act, 1999 |
| <b>MIS</b>       | Management Information System                          |
| <b>MoCA</b>      | Ministry of Civil Aviation                             |
| <b>MoU</b>       | Memorandum of Understanding                            |
| <b>NFRA</b>      | National Financial Reporting Authority                 |



|                 |                                                        |
|-----------------|--------------------------------------------------------|
| <b>OECD</b>     | Organization for Economic Co-operation and Development |
| <b>OMDA</b>     | Operations Management Development Agreement            |
| <b>PAC</b>      | Parliamentary Accounts Committee                       |
| <b>PPP</b>      | Public – Private Partnership                           |
| <b>PSF</b>      | Passenger Service Fee                                  |
| <b>ROFR</b>     | Right of First Refusal                                 |
| <b>RTI</b>      | Right to Information Act, 2005                         |
| <b>SEBI</b>     | Securities and Exchange Board of India                 |
| <b>SSA</b>      | State Support Agreement                                |
| <b>TII</b>      | Transparency International India                       |
| <b>ToR</b>      | Terms of Reference                                     |
| <b>UNCAC</b>    | United Nations Convention against Corruption           |
| <b>UNCITRAL</b> | United Nations Commission on International Trade Law   |
| <b>UNODC</b>    | United Nations Office on Drugs and Crime               |



# 1. Executive Summary

Public procurement or government procurement is an important activity for all countries. It is an activity by which governments procure to provide goods or services required in the country. It accounts for a substantial amount of global and national expenditure. At the global level, public procurement spending accounts for about 15% of the world's GDP<sup>1</sup>. In India, estimates of public procurement vary between 20% of GDP<sup>2</sup> to 30% of GDP<sup>3</sup>. There are ministries in the Government of India where approximately half of the total budget is spent on public procurement alone.<sup>4</sup> This makes the need for integrity in public procurement not merely an ethical requirement but an economic and social one too.

Recognizing the importance of strengthening anti-corruption measures in public procurement the United Nations Convention against Corruption (UNCAC) which came into force in 2005 provides for article 9: Public procurement and management of public finances as an important provision in preventing corruption. Governments and international organisations, across the globe, have also recognised the vulnerability of public procurement to corruption.

In May 2011, India became party to the UNCAC. In India, governments largely procure from the private sector, through regular public procurement channels. Another procurement function of the government is that through Public Private Partnership (PPP) projects. India has emerged as one of the leading markets for PPPs in the world. PPP projects are complex, as they require strong legal frameworks and mechanisms for managing large spend and the development of solid relationships between public and private actors over the life cycle of the project.

The General Financial Rules 2005 are the rules followed for public procurement by government departments and ministries across the country. These rules do not have the status of legislation and violations do not attract much penalty. India currently has no clear rules for regulating PPP projects. Furthermore, India has approximately 35 different ministries at the central level alone and no central procurement mechanisms. In addition, there are approximately 26 states and 7 union territories that procure independently. There are only a few states in India that have drafted a legislation for public procurement. With regard to the private sector's association with the government in procurement contracts, internal and individual company policies and codes of companies govern this association, creating challenges of accountability. To address some of these, the Government of India has drafted the Public Procurement Bill 2012 which also contain Draft Rules for PPP 2011. This legislation is applicable for procurement by the central government and does not apply to the states. The bill was tabled in Parliament and passed in the lower house of the Parliament in May 2012 i.e. Lok Sabha. It now awaits clearance in the upper house i.e. Rajya Sabha.

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<sup>1</sup>OECD, 2005

<sup>2</sup>WTO estimates

<sup>3</sup>OECD estimates

<sup>4</sup>Departments like Defence, Railways and Telecom devote approximately 50% of total budget to procurement.



UNODC is guardian of the UNCAC with the mandate to assist and enhance capacity of States Parties to implement the provisions of this Convention. In line with this, UNODC in India is implementing two anti-corruption projects supported by the Siemens Integrity Initiative to strengthen India's efforts to effectively implement article 9 of UNCAC- *Public procurement and management of public finances*. The two projects are – **“Public-Private Partnership for Probity in Public Procurement”** which seeks to reduce vulnerabilities to corruption in Public Private Partnership projects (PPP) and **“Incentives to Corporate Integrity and Cooperation in Accordance with UNCAC”** which addresses a larger umbrella of private sector integrity issues including private sector association with the government under public procurement.

This report presents the findings of two research initiatives carried out under the **‘Public-Private Partnership for Probity in Public Procurement’** project. The first is an assessment of Indian legislation to assess compliance with the UNCAC. The second is a survey of current practices, grassroot challenges and training needs to identify gaps in practice. Furthermore key insights and practical experiences were shared during the meeting of six working groups which brought together high level officials from the government, private and civil society sectors. Both mechanisms provided valuable information on the legal framework as well as its practical implementation.

The first study i.e. assessment of Indian legislation, indicates compliance of the Public Procurement Bill 2012 and Draft Rules for Public Private Partnerships 2011 with the UNCAC. With this legislation, India is well on the way to achieving comprehensive legislative coverage for probity in public procurement in India. The Government of India has also set up the Procurement Redressal Committee. A bidder aggrieved by actions of the procuring authority can appeal to this committee. Furthermore the Draft Rules for PPP contain many good practices that strengthen their compliance with the UNCAC. The PPP rules address bribery, collusion and to some extent, money laundering. There is also a separate legislation for money laundering in India. The PPP rules provide for measures against procurement officials who may be originators of corruption, code of conduct for private sector and debarment policies for defaulting bidders. It addresses both the procurement stage as well as contract management and project implementation stages providing rules for contract management. It necessitates maintenance of records of every procurement. It also lays down obligations for the government in case the private sector is unable to meet its commitments as per the PPP contract so that provision of facilities to the citizen is less affected.

While an important recommendation of this report is swift enactment of this bill and rules for PPPs since they are compliant with the UNCAC, other important recommendations at a legislative level may be considered. Firstly, consideration to be given for the expansion of the definition of public officials to add private sector entities and officials operating under PPPs within this definition. An inclusion such as this would help to make the private sector accountable under several legislations currently applicable only for public officials. Secondly, there is a need for regulation of personnel with procurement functions like conducting risk assessments and improved selection procedures to be followed for certain posts or offices for those involved in procurement. With respect to conflict of interest applicable to public



officials, stipulations wherein besides employment, other forms of engagement (advisory with retainer, subcontract) between former government officials and the private sector with whom there has been direct association in his/her official status, may be discouraged. Thirdly, in case of violation by bidders, along with penalties or debarment, the bidding entity must be required to show evidence of establishing and putting in place an integrity mechanism within specific guidelines before they are allowed to bid again.

Additionally and since the Public Procurement Bill 2012 is mainly applicable for central government procurement, there is a need for other states to develop similar legislations or policies. This is especially so for states that have a high volume of procurement and PPPs.

This report additionally contains a review of the procurement legislation on one pilot state- Karnataka, as it is one of the few states in India that has enacted a public procurement law - the Karnataka Transparency in Public Procurement Act 1999 and its associated rules. It was found that the Karnataka legislation is broadly compliant with the UNCAC touching essentially, all the principles of the UNCAC. However, there may still be room for strengthening this legislation in line with the Public Procurement Bill 2012 and Draft Rules for PPP. Nevertheless, it is also important to mention the “PPP Cell” that was set up under the Infrastructure Development Department (IDD) in 2007. The PPP Cell is the nodal agency to receive proposals in respect of Public Private Partnership (PPP) projects and place them before the single window agency (SWA) for consideration and approval. The PPP Cell also helps various state departments/agencies in different stages of the project development cycle.

While the existence of a strong legislation is a necessary means to ensure probity in public procurement, legislation alone cannot address the deviations that occur at a practical and grassroot level. The report contains findings of a second study- responses to questionnaires completed by both government and private sector officials on some of the stages in the procurement cycle that are vulnerable to corruption, as well as examples of some of on-ground challenges. While this may not be an exhaustive list, officials of different sectors who were involved in some stage of procurement processes suggest the following on-ground challenges: Objective laws being interpreted subjectively in practice; inconsistencies in vocabulary and lack of standardization of key definitions and terms; winners identified before procurement process; subversion of procedures under the excuse of ‘suitable bidders not available’; partiality and laxity in establishing specifications to suit specific bidders; bribing, collusion, cartel formation to suppress competition and other coercive practices; limited skills of consultants or personnel to detect corrupt practices and limited liability; low integrity of external consultants; loopholes and vulnerability to corruption in project implementation stages and challenges arising from mergers and acquisitions.

All these suggest that while laws, rules and policies are important, there is a basic need for an ethical mind set and greater liabilities without which laws and rules can always be manipulated and there can be no fool proof laws or procedures.



Therefore there is a need to enhance training and awareness on probity issues and vulnerabilities to corruption. These trainings must also be available as part of professional courses for those soon to enter the work force. Furthermore, from interactions with officials of different sectors, it is often seen that government sector officials do not fully understand the workings of the private sector and visa-versa, creating man made walls and vulnerabilities to corruption. Training and sensitisation may serve to address this gap as well. Other important suggestions include: strengthening grievance redressals between bidding and procuring entities and within each of these entities; supporting existing grievance redressal policies with effective whistleblower; victim and witness protection legislations; support and oversight procedures for employees in positions that are especially vulnerable to corruption, including regular appraisals, confidential reporting, registration and declaration of interests, assets, hospitality and gifts; placing high priority on stronger implementation of asset declaration aspects in relation to public officials involved in procurement; e- procurement is an important measure to enhance transparency in procurement processes but should not be mistaken as the only measure; creating and facilitating mechanisms for public participation in different stages of procurement decisions without hampering the cost and time effectiveness of the project. A need for reducing the number of stages in the procurement cycle with each stage providing vulnerabilities to corruption.

Finally, it is important to also take cognizance of another vital issue: The need to recognize, appreciate and protect the business interests of a PPP. Often when a project fails, the most obvious reasons cast are that of corruption which may or may not be the case. Honest officers face tremendous pressure of action by authorities and criticism for a decision that was taken in good interest. This leads to a situation of paralysis in decision making. There is a need therefore, for awareness on this aspect including aspects on what corruption entails. Secondly there may be a need for a risk indicator at the outset of a project which identifies the various risks to the project. These may include many risks among which corruption is only one risk. An analysis against this risk indicator at the time of evaluation of a project will help to identify more clearly the reasons for failure.

In conclusion and as seen above, a comprehensive approach is important to enhance transparency, objectivity and competition. An effective balance of legislative and practical enforcements to ethical behaviour and accountability is essential.



## 2. Introduction

### 2.1. United Nations Convention against Corruption

The United Nations Convention against Corruption (UNCAC) came into force on 14th of December 2005. It is the first global anti-corruption instrument that urges States Parties to create legal and policy frameworks in accordance with globally accepted standards and to create an international regime to effectively tackle corruption. Recognizing the importance of procurement in every country and its vulnerability to corruption, the UNCAC contains a specific article i.e. article 9: Public procurement and the management of public finances. Text of this article is as follows:-

#### **Article 9:**

1. **Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective inter alia, in preventing corruption. Such systems which may take into account appropriate threshold values in their application, shall address, inter alia:**
  - A) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders.
  - B) The establishment, in advance, of conditions for participation including selection and award criteria and tendering rules, and their publication.
  - C) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures.
  - D) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed.
  - E) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.



2. **Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:**
  - A) Procedures for the adoption of the national budget
  - B) Timely reporting on revenue and expenditure
  - C) A system of accounting and auditing standards and related oversight
  - D) Effective and efficient systems of risk management and internal control and where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.
3. **Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements of other documents related to public expenditure and revenue and to prevent the falsification of such documents.**



## 2.2. Approach and methodology

This report reflects the findings and consolidated recommendations of two studies:

### **A. Compliance of Indian laws and policies with the United Nations Convention against Corruption – article 9 – Public procurement and the management of public finances.**

#### Methodology:

The assessment was based on a desk review of Indian legislation and policy at the central level and in one pilot state of Karnataka to assess compliance with article 9 of the UNCAC. The main legislation at the central level considered was the Public Procurement Bill 2012 and Draft Rules for Public Private Partnerships 2011. At the state level, the main legislation reviewed was the Karnataka Transparency in Public Procurement Act 1999 (KTPP Act).

Further, as part of the effort to obtain feedback on how rules and procedures are perceived to be implemented, seven entities (three at the national level and four at the state government level) were identified based on the criteria listed below:

- Diversity in project size by value in INR (large, medium, small)
- Diversity in sector
- Hypothesis around presence of discretion and monopoly in the above mentioned sectors.

**Annexure 1:** Contains details of the different legislations, policy documents and the list of seven entities referred to for this analysis.

Center for Policy Research, a research organisation recognised by the Indian Council of Social Science Research (ICSSR), Government of India was contracted for the assignment.



## **B. Survey to assess current practices, challenges and training needs to identify areas that require strengthening in relation to article 9:**

### **Methodology:**

A survey was conducted to encourage responses from officials of both the government and the private sector. The survey was tested with a group of 10 to 15 individuals, after which it was modified. Thereafter, from June 2012 to January 2013 approximately 400 individuals were contacted and responses were received from approximately 100 respondents. Ernst & Young Pvt. Ltd. a global consulting firm was contracted for the assignment.

**Annexure 2:** Provides details of the sample chosen for the survey.

**Annexure 3 & 4:** Provides copy of questionnaires used for the survey.

Furthermore, the study sample and findings of both studies were discussed and shared at six meetings of the 'Expert Working Groups' constituted in New Delhi and in Bangalore, respectively. These meetings were held between May and June 2012 and brought together high level of representation from the government, private and civil society sectors. **Annexure 5** provides details of participants to these working groups. The recommendations and findings of this report reflect the feedback and recommendations received from members of the Working Groups. Input provided by the Working Group participants enriched the review process and helped the research team arrive at more precise outputs. The recommendation of the report also reflects the discussions that took place at the expert group meeting held at the IACA campus in Laxenburg, Austria from 24 to 26 September 2012.

### **Challenges faced during research:**

Both research teams faced several challenges in eliciting information and opinions. Responses were not forthcoming from the selected entities on queries about corruption and areas vulnerable to corruption. Most entities were silent, reticent or cautious in their responses. Whatever little was received by way of responses concerning practices were more statements of intent rather than how these are translated into practice on the ground. Consequently, the research team undertook a course correction and focused on obtaining information on practical difficulties encountered, from official reports of the CAG and the CIC. This indicates that reluctance and fear to talk about corruption is an important area that needs to be addressed. Secondly at the time of research and publication of this report, the Public Procurement Bill was still in draft. Therefore there may be a possibility that recommendations of this report already have been integrated.



## 3. Public Private Partnerships

### 3.1. What are public private partnership projects and how are they different from public procurement:

The prime objective of procurement is to get the right product or service, at the right price and quality, at the right time. While 'public procurement' refers to the overarching activity of government procurement, 'public private partnership (PPP) projects' present one method of public procurement. The Government of India views the activity of entering into a PPP as a procurement function and not merely as that of a partnership. This is evident from the Public Procurement Bill 2012, under which the term PPP has been defined.

There also exists a National Policy for PPP 2011 which outlines four stages of a PPP, wherein, the stage of entering into an arrangement with a private sector organization is defined as the procurement stage. The four stages are as follows:

1. PPP identification - referring to the decision to opt for a PPP as compared to any other mode.
2. Project development- project preparation, clearance and approval.
3. Project procurement- procuring and awarding a contract to the private sector entity.
4. PPP contract management and monitoring stage project implementation and monitoring over the life of the PPP project.

Clause 1.1 of the Government of India, draft National PPP Policy 2011 and Chapter 1 of the Public Procurement Bill 2012 defines a Public Private Partnership as an arrangement between a government/statutory entity/government owned entity on the one hand and a private sector entity on the other, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the public entity, and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and pre-determined criteria.

In contrast with the draft National PPP Policy, the Public Procurement Bill, 2012 restricts the definition of PPPs to projects that exceed a five year limit. Furthermore, it excludes construction or maintenance contracts that do not involve the provision of a service or goods on the payment of user charges from the ambit of PPPs.

Clause 1.2 spells out seven essential conditions that would be present in a PPP. These are:

1. **The arrangement ought to be with a private sector entity:** The asset and/or service under the contractual arrangement ought to be provided by the private sector entity to users. An entity that has a majority of non-governmental ownership, i.e., 51% or more, is construed as a private sector entity.



2. **There must be the use of a public asset or provision of service for public benefit:** The facilities/services being provided ought to be traditionally provided by the government, as a sovereign function, to the people. To better reflect this intent, two key concepts are elaborated below:
  - a. **‘Public Services’** i.e. those services that the State is obliged to provide to its citizens or where the State has traditionally provided services to citizens.
  - b. **‘Public Asset’** i.e. that asset the use of which is inextricably linked to the delivery of a Public Service, or, those assets that utilize or integrate sovereign assets to deliver Public Services. However, the fact that a public asset is ownership by the government need not alone necessarily imply that it is a PPP.
3. **Investments ought to be made by and/or management ought to be undertaken by the private sector entity:** The arrangement could provide for financial or non-financial investments by the private sector; the intent of the arrangement ought to be to harness private sector efficiency in the delivery of quality services to users.
4. **Operations or management ought to be provided by the private sector entity for a specified period:** PPP arrangements cannot be in perpetuity. After a pre-determined time period, the arrangement with the private sector entity comes to a close.
5. **The private sector entity concerned should share the risk of providing services:** Mere outsourcing contracts are not PPPs.
6. **There ought to be performance linked payments envisaged to be paid to the partnering private sector entity:** The central focus is on performance and not merely on the provision of a facility or service.
7. **There must be compliance to performance standards:** The focus should be on the delivery of services through compliance to pre-determined and measurable standards specified by the ‘partnering authority’ on the side of the government.



## Public Private Partnerships- A growing trend in India:

India has witnessed considerable growth in PPPs in the last one and a half decades. Today, it has emerged as one of the leading PPP markets in the world.<sup>5</sup>

“The Government of India is committed to improving the level and the quality of economic and social infrastructure services across the country. In pursuance of this goal, the government envisages a substantive role for Public Private Partnership (PPPs) as means for harnessing private sector investment and operational efficiencies in the provision of public assets and services.”

The Indian economy has been delivering strong economic growth across most sectors for the last few years. However, to achieve inclusive and sustainable growth, it is vital to develop its infrastructure – power, water, roads, ports, airports, urban bus and metro lines, health and education facilities, etc. which serve as the backbone for businesses, livelihoods and living. Infrastructure demand is expected to go up to \$1 trillion under India’s 12th Five-Year Plan (2012-2017). The Government of India (GOI) has therefore focused on developing several enabling tools and activities to spur private sector investments into the country through Public Private Partnerships (PPPs).

**This upward growing trend merits the need for legislation and procedures that address probity issues in PPPs.**

Following are some of the top sectors under which PPP projects seem most prevalent:<sup>6</sup>

### SECTOR WISE

| Sector-wise       | Total Number of Projects | Value of Contracts<br>Crore rupees* |
|-------------------|--------------------------|-------------------------------------|
| Roads             | 405                      | 176,725                             |
| Ports             | 61                       | 81,038                              |
| Energy            | 56                       | 67,245                              |
| Urban Development | 152                      | 29,475                              |
| Airports          | 5                        | 19,111                              |
| Tourism           | 50                       | 4,486                               |
| Education         | 17                       | 1,850                               |
| Health Care       | 8                        | 1,833                               |
| Railways          | 4                        | 1,570                               |
| Total             | 758                      | 383,332                             |

<sup>5</sup>Draft National PPP Policy 2011

<sup>6</sup>Source: <http://www.pppindiadatabase.com> – December 2012

\* 1 crore rupees = 10 million rupees



### 3.2. Overview on the status of current legislation and compliance with UNCAC

#### ***National Legislation:***

Currently, there is no central law to govern public procurement or PPPs in India.

The General Financial Rules, 2005 are applicable to govern public procurement processes at the national level. The overall institutional framework of public procurement in India is comprised of the Ministry of Finance, Ministry of Commerce and Industry and the Public Works Department (PWD) of respective states, which form the nodal agencies to lay down procedures and policies to be followed. However each ministry and government department processes independently. The Finance Ministry's manual on policies and procedure for the procurement of works, the delegation of financial powers rules, government orders regarding price or purchase preference or other facilities to sellers in certain sectors, as well as guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement, complete the current regulatory framework. However, these rules only have the status of a subordinate legislation. These are generic guidelines on government expenditure and do not contain specific penalties for contravention of their provisions. Furthermore, violations of the aforesaid rules, particularly the General Financial Rules 2005, seldom attract penalties. Provisions of the Indian Contract Act 1872, the Sale of Goods Act 1930, the Arbitration and Conciliation Act 1996, the Right to Information Act 2005, Prevention of Corruption Act, 1988, Financial Acts, Prevention of Money Laundering Act, 2002 and the Criminal Law (Ordinance) Act, 1944 may also be considered in the processes of public procurement. India also has in place, the Competition Act 2002 and the Competition Commission to support and encourage fair competition but the same has not found to play a central role with regard to issues of public procurement.

In light of the above facts and in order to strengthen the legislative and policy framework for ensuring corruption free public procurement, India has prepared the Public Procurement Bill 2012 which contains within it, Draft Rules for Public Private Partnerships 2011.

*The Public Procurement Bill 2012 aims to regulate public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, maintaining integrity and public confidence in the public procurement process and for matters connected therewith or incidental there to.<sup>7</sup> Since PPPs are a form of public procurement, this bill shall apply to PPPs as well.*

However, viewing PPPs as a slightly different and complex form of procurement, the Draft Rules for PPP 2011 have been drafted with the purpose of further defining the norms and procedures for procuring PPP projects, guiding officers of the government in structuring PPP projects and in decision making.<sup>8</sup>

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<sup>7</sup>Public Procurement Bill 2012

<sup>8</sup>Draft Rules for Public Private Partnership Projects 2011.



The Government of India has also set up a Public Private Partnership Appraisal Committee to streamline the appraisal and approval of projects.

Therefore the main legislation reviewed for compliance with the UNCAC was the Public Procurement Bill containing the Draft Rules for PPP. However, the analysis also takes into account provisions of the General Financial Rules 2005 and other relevant legislations.

Upon review, India's PPP Bill, if implemented, would enable India to achieve compliance with the stipulations contained in the UNCAC.

The Public Procurement Bill and the Draft Rules also address gaps in procurement practice. These gaps in practices can be attributed to a number of other factors such as: process inefficiency and deviation from policy, human intervention, scope for the exercise of unwanted discretion, weak systems of accountability for decisions taken, lack of transparency in performance evaluation of the procured private partner post contract, and limitations in the governance review mechanism.

India will be compliant to article 9 of the UNCAC following the passage of the Public Procurement Bill 2012 containing the PPP rules 2011.

*Table 1 provides a detailed assessment of compliance of Indian legislation & policy at the national level with UNCAC.*



## National Legislation:

**Table 1: National level compliance of legislation and policy with legal principles outlined in article 9 of UNCAC:**

*\* Since the main legislations mentioned below were still draft legislations at the time of review, the sections or chapter numbers and titles quoted below may change. However, the important aspect that the table highlights is the existence of the necessary provisions and compliance with the UNCAC.*

| UNCAC Article                                                                                                                                                 | Domestic Regulatory Mechanism                                                                                                                             | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| Art 9.1. Appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making effective in preventing corruption. | <b>Draft National Policy for Public-Private Partnership - Clause 4</b><br><b>Public Procurement Bill 2012</b><br><b>Draft PPP rules 2011</b>              | <p><b>Compliant</b> – Chapter 6 of the General Financial Rules, 2005. Rule 160 stresses the need for transparency, competition, fairness and elimination of arbitrariness in the procurement process. As the rule mandates fairness of procedure in the interest of obtaining the best value-for-money, provisions such as those providing for dissemination of correct information through efficient bidding processes and well-defined documents it is in conformity with the requirements of article 9.1(a), (b) &amp; (c). Requirements for precise ToRs, a correct scope-of-work, as well as concise identification of expenditure are required by the rules, in keeping with the UNCAC's provisions.</p> <p>In the specific context of public procurement involving a private bidder, Clause 6 of the Public Procurement Bill 2012 has laid down a detailed code of conduct for promotion of good business practices involving both public officials and private players.</p> <p>Clause 4 of the Draft National PPP Policy aims to enhance PPPs through streamlined processes and governance structures that facilitate competitiveness, fairness and transparency in procurement.</p> <p>Draft PPP rule: Aims to meet this objectives of transparency, competition and objectivity in totality. These are addressed in most chapters but especially Chapter V and Chapter IX - General provisions regarding procurement and request for proposal, respectively.</p> |
| Art 9.1. (a) –Public distribution of information relating to procurement procedures and contracts.                                                            | <b>GFR 2005: Rule 160 (i) (c) and (d), (v), (vi), (xv)</b><br><b>Procurement Bill 2012: Chapter III Clause 38 &amp; 39</b><br><b>Draft PPP rules 2011</b> | <p><b>Compliant</b> - GFR specifies information that must be communicated to bidders in order to ensure transparency.</p> <p><b>The Public Procurement Bill 2012</b> incorporates these stipulations to a large degree. Chapter III, Clause 38 &amp; 39 of the bill aims to provide a record of the entire procurement process by mandating documentation and the transmission of timely information to procuring entities and participants. Furthermore, Chapter II of the bill lists general principles and conditions while choosing the method of procurement and their applicability.</p> <p>Draft PPP rules : Chapter V and Chapter IX - General provisions regarding procurement and Request for proposal and Chapter VI: Expression of interest, respectively.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |



| UNCAC Article                                                                                                                                          | Domestic Regulatory Mechanism                                                                                                    | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| Art 9.1 (b) The establishment, in advance, of conditions for participation including selection & award criteria & tendering rules & their publication. | <b>GFR 2005:</b> Rule 166, 167 & 170<br><b>Procurement Bill, 2012:</b> Chapter II (II A and II b)<br><b>Draft PPP rules 2011</b> | <b>Compliant</b> - The Public Procurement Bill has devoted Chapter II to outlining various methods of public procurement & the different sets of conditions applicable to each.<br><br>The GFR directs all procuring ministries & departments to outline selection criteria as well as a detailed, 'Terms of Reference' (ToR) to be used during procurement activities.<br><br>Draft PPP rules - Chapter III, V, VI, VII, VIII, IX, XII Appendix 6.<br><br>Further, Chapter III, XII of Draft PPP rules provide that tendering frameworks should contain threshold limits, prime rates, cost-plus rates, duration of term of project and similar conditions. These are to be made available to bidders throughout the bidding process.<br><br>Chapter V and XII - There can be use of internet as a means for contract information dissemination.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Art 9.1 (c) The use of objective and predetermined criteria for public procurement decisions.                                                          | <b>GFR, 2005:</b> Rule 128 & 129<br><b>Procurement Bill, 2012:</b> Chapter II A - Clause 21<br><b>Draft PPP rules 2011</b>       | <b>Compliant</b> - Clause 21 of the procurement bill captures the essence of the UNCAC while stipulating that no bid will be rejected on a condition not already stated in the bidding documents. Chapter II, Clause 21, also does not permit evaluation of bids on using criteria not disclosed to participants in bidding documents.<br><br>GFR lays down procedure for execution of procurement in detail such as the issuance of approval of concerned department and a valid work order. This documentation is to be maintained in order to facilitate future audits and checks of procurement activity.<br><br>Draft PPP rules - Chapters III, V, VI, VII, VIII, IX, X, XI, XII establish rules for tender and award procedures: bid preparation and budget planning; solicitation and selection; contract delivery, variation and performance, and approved lists.<br><br><b>Contract management</b> - Further the rules also provide for Chapter X- Post Award project and project management and also Annexure 12- Contract management principles. Chapter III, IX of Draft PPP rules provide rule pertaining to how contracts are structured - e.g., framework or master agreements, or one-time contracts.<br><br>Chapter V of Draft PPP rules provide for the use of standard verification, validation and audit controls, including: no-collusion and no-bribe clauses, debarment policies, data matching, product benchmarking for supplies, evidence of company economic stability and capacity proportionate to contract. The standardization of procurement systems necessitates that all elements used for oversight need to be integrated - e.g., using e-procurement systems.<br><br>Chapter V, VI, VII, VIII and IX of Draft PPP rules- There should be minimum variation of contract after the commencement of the bidding process. There should be an independent process established by the public agency conducting the bidding to enable contract verification by the bidders before bid-submission is undertaken. |



| UNCAC Article                                                                                                                                                                                                                   | Domestic Regulatory Mechanism                                                                                                                                               | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| Art 9.1 (d)<br>An effective system of domestic review, including an effective system of appeal.                                                                                                                                 | <b>GFR, 2005:</b> Rule 130, 133 & 134<br><br><b>Public Procurement Bill, 2012:</b> Chapter III B.<br><br><b>Draft PPP rules 2011</b>                                        | <b>Compliant</b> – As laid down in chapter IIIB of the Public Procurement Bill 2012, a bidder aggrieved by actions of the procuring authority can appeal to the Procurement Redressal Committee. Clause 21.3 states that the central government shall constitute one or more independent Procurement Redressal Committees and different Procurement Redressal Committees may be constituted for a group of procuring entities or for different subject matters of procurement or for different geographical areas as may be considered necessary.<br><br>Furthermore, Clause 21.4 stipulates that every committee to be comprised of not less than three members, including its chairperson who shall be a retired Judge of a High Court. Clause 21.4 establishes the criteria to choose members of the Committee.<br><br>Public Procurement Bill furthermore, provides for a number of penalties in case of violations, applicable to both public procurement and also PPPs.<br><br>As per the General Financial Rules 2005, for projects valued above INR 100 million, there is to be a Review Committee instituted by the Administrative Ministry (Internal Finance Wing) to review the progress of the project.<br><br>Draft PPP rules 2011- Chapter V and XI. There should be a system of maintenance of full procurement records in order for any challenge, including appeal, to be effective, particularly regarding speed, transparency, publicity, timely suspension of procurement proceedings or contract as appropriate.<br><br>Chapter XII may also be mentioned to some extent in this regard. |
| Art 9.1 (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements. | <b>Public Procurement Bill, 2012:</b> Chapter II clause 6, Chapter III clause 43, Chapter IV clause 44,45,46,48,50; Chapter V clause 51.<br><br><b>Draft PPP rules 2011</b> | <b>Compliant</b> – Currently, there exists a set of conduct rules for government employees that prohibit them from accepting bribes or gifts. Any gifts received need to be reported to the reporting authority. In this context, the law and associated procedures require strengthening. However, with regards to PP Bill 2012, Chapter II Clause 6 – code of integrity for procuring entity and bidders, Chapter III Clause 43 – Requirement of professional standards, training and certification, Chapter IV Clause 44, 45, 46, 48, 50 – Offences, Penalties and Debarment, Chapter V Clause 51 of the Public Procurement Bill 2012, provide compliance with Article 9.1(e).<br><br><b>Draft PPP rules 2011</b> - Chapter I, II, IV, V, XI, XII Appendix 10, contain provisions regarding personnel and their responsibilities. However, matters such as screening procedures & training requirements still require to be strengthened.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |



| UNCAC Article                                                                                                                       | Domestic Regulatory Mechanism                                                                                                                           | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| Art 9. 2. State Party to take appropriate measures to promote transparency and accountability in the management of public finances. | <b>Annual Financial Acts; Public Procurement Bill, 2012</b> – Statement of objects and reasons<br><br><b>Delegation of Financial Powers Rules, 1978</b> | <p><b>Compliant</b> - Statement of objects and reasons of the Public Procurement Bill, 2012 states that central government, central public sector enterprises as well as autonomous and statutory bodies are also subject to audit by the Comptroller and Auditor General of India and are required to follow the guidelines issued by the Central Vigilance Commission.</p> <p>Through the Annual Financial Acts (also known as the Union Budget), the Government of India provides a public record of income and expense, as envisaged by the UNCAC. Similar provisions mandate State Governments to present their budgets to State Legislatures, as also to provide a public record of accounts and audits of accounts annually.</p> <p>A department of the central government shall have full powers to sanction expenditure for purchase and execution of contracts subject to the:</p> <p>(i) Delegation of financial powers in the DFP Rules, 1978;</p> <p>(ii) Purchasing powers delegated from time-to-time to the indenting departments for making purchases directly and not through the Central Purchase Organization. However, previous consent of the Finance Ministry is required in certain cases.</p> |
| Art 9.2. (a) Procedures for the adoption of the national budget.                                                                    | <b>Constitution of India, Annual Financial Acts</b><br><br><b>Draft PPP rules- 2011</b>                                                                 | <p><b>Compliant</b> - There are clearly established procedures for the adoption of the budget. Parliamentary democracy uses the Annual Budget as one of its fundamental strengths to bring accountability in government expenditure.</p> <p>Draft PPP rules- Chapter III - There should be a proper budget preparation at the individual procuring entity level as a part of procurement planning.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Art 9.2 (b) Timely reporting on revenue and expenditure.                                                                            | <b>Various Financial Acts - Union and States,</b><br><b>Delegation of Financial Powers Rules, 1978</b>                                                  | <p><b>Compliant</b> - Mandated by legislation to report on revenue and expenditure. Several pieces of legislation exist within the Federal Structure – at the Central, State &amp; Local Governance body levels to enable annual financial budgeting, audits and reporting</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Art 9.2(c) A system of accounting & auditing standards & related oversight.                                                         | <b>Various Financial Acts, Company Bill 2012, SEBI Guidelines, Public Procurement Bill 2012</b><br><br><b>Draft PPP rules 2011</b>                      | <p><b>Compliant</b> - There is a comprehensive network of auditing rules that is applicable to public sector and private sector companies.</p> <p>The Public Procurement Bill 2012 (Statement of Objects and Reasons) empowers the Comptroller and Auditor General (CAG) of India to audit the accounts of a PPP project – including those of the private entity, thereby ensuring compliance to article 9.2(c). Non-compliance as determined by the auditing process, are subject to penalties as included under the Prevention of Corruption Act 1988 and Prevention of Money Laundering Act 2002.</p> <p>Draft PPP rules-Chapter V -There should be maintenance of a record for each procurement, setting out the information to be included, which would constitute the basic information necessary for audit.</p>                                                                                                                                                                                                                                                                                                                                                                                                 |



| UNCAC Article                                                                                                                          | Domestic Regulatory Mechanism                                                                                                                                                                    | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| Art 9.2 (d)<br>Effective and efficient systems of risk management and internal control.                                                | <b>Various Financial Acts, SEBI Guidelines.</b><br><b>Draft PPP rules 2011.</b>                                                                                                                  | <p><b>Largely Compliant</b> - Currently, there is a practice of rotation of officers for certain posts that are categorized as being “sensitive”. However there are no criteria or basis to select officers to sensitive posts. Also there is no mention of any specific process to assess vulnerability of certain positions. The proposed Public Procurement Bill 2012 addresses some of the above issues, but there is an opportunity to adopt some good practices from UNCAC to strengthen risk management and internal controls.</p> <p>Chapter III of Draft PPP rules provides for bid evaluation, taking into account practices such as best value-for-money, project-feasibility for the private entity and prior experience of the bidders. This matrix should be evaluated and kept updated to market forces at specified regular intervals.</p> <p>Chapter IV, V, X, XI, Appendix 1 of Draft PPP rules- Where possible and depending on the level of risk, a system of multiple-level review and approval for certain matters rather than having a single individual with sole authority over decision-making should be adopted. This is in order to protect staff from undue influence and also to introduce an element of independence to the decision-making process. Chapter I, V of Draft PPP rules- There should be a common procurement vocabulary and standardized terms in defining specifications which have a useful role to ensure objectivity in the procurement process communication and in reducing some amount of risk.</p>                                                                                                                                                                                                                         |
| Art 9.2 (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph. | <b>Prevention of Corruption Act, 1988; Company Bill 2012, 1956; SEBI Guidelines, Prevention of Money Laundering Act, 2002; Criminal Law (Ordinance) Act, 1944</b><br><b>Draft PPP rules 2011</b> | <p><b>Compliant</b> - A comprehensive criminal (and civil liability) framework exists amongst Indian legislation that penalizes offences related to money laundering, unjust profiteering from crimes and other offences of an economic nature.</p> <p>Currently applicable legislation to address failures in compliance through penalties includes: the Prevention of Corruption Act 1988 and the Prevention of Money Laundering Act 2002. Chapter IV of the Public Procurement Bill 2012 enumerates offences and penalties in the specific context of procurement activities that is largely applicable to PPPs as well. The offences have been documented to a great degree of detail with subsequent mapping to penalties. To provide speedy justice, the bill goes on to establish Special Courts that are empowered to conduct trials of offences listed.</p> <ul style="list-style-type: none"> <li>• Making money laundering an offence.</li> <li>• Bribery of public officials is also penalised.</li> <li>• Attachment of property involved in money laundering.</li> </ul> <p>There are regulations and legal mandates to ensure that offenders do not benefit from unjust enrichment. Various sections in the Prevention of Money Laundering Act and the Criminal Law (ordinance) Act enable the attachment and confiscation of property involved in listed offences.</p> <p>The Draft Rules for PPP also contain provisions relevant to this provision.</p> <p>Chapter V provides for a system of debarment of respondents for proven non-compliance with procurement processes or corrupt conduct. The draft PPP rules provide a system of making clear possible measures against procurement officials who may be the originators of the corrupt behaviour.</p> |



| UNCAC Article                                                                                                                                                                                                                                                                                                                                  | Domestic Regulatory Mechanism                                                                                                                          | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| Art 9.3 State Party to take civil & administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue & to prevent the falsification of such documents | Various Financial Acts, Companies Act, SEBI Guidelines, internal departmental and organizational requirements through rules, guidelines and processes. | <p><b>Compliant</b> - Although not specifically identified as regulations in the public-private partnership space, currently there exist varied rules and laws that cover financial recording for legal entities as required by the UNCAC. There is a comprehensive network of auditing rules that is applicable to public sector companies, private sector companies and more recently, watch-dog organizations such as the CVC. The office of the Comptroller and Auditor General of India also have been involved in the review of large-scale projects in the PPP space. The Comptroller and Auditor General (CAG), as mandated in the Constitution of India, oversees the accounts of the Union and the States (Chapter V, Articles 148-151, Constitution of India). The reports of the CAG relating to the accounts of the Union are laid before each house of the Parliament and those relating to the accounts of the State are laid before the legislature of the State. These reports also cover procurement. The Public Accounts Committees (PAC) at the national and state levels examines compliance by the executive of the reports of the CAG by conducting a detailed examination. These committees can seek and obtain evidence through the conduct of hearings and can call for all documents related to any decision or procedure relating, inter-alia, to public procurement.</p> <p>Similarly, there are arrangements for local fund audit that focus on audits of local governments. These reports are also laid before the State Legislative Assemblies and come before PACs for examination.</p> <p>Departments of the central government shall have full powers to sanction expenditure for purchase and execution of contracts subject to the delegation of financial powers in the DFP Rules, 1978 and the purchasing powers delegated to them from time-to-time for making purchases directly.</p> <p>However, previous consent of the Finance Ministry is required for any purchase or contract exceeding a total value of INR 50 million over the entire period of its currency and any negotiated or single tender contract exceeding INR 10 million in value, which also includes a limited or open tender that results in only one effective offer.</p> |



### 3.3. Recommendation of Working Group participants on legislative aspects and practices linked to it:

From the above analysis, it is evident that the Public procurement bill 2012 and the Draft Rules for PPP 2011 are compliant with the UNCAC. Further, recognizing that all countries have their own unique public procurement systems and that a one size fits all approach is not necessarily the best approach, there are several practices that could be considered as good practices in these legislations and rules. While recognizing this the following are some recommendations that emerged from the discussions of the Working Group meetings on the above mentioned draft legislations:

1. Need to recognize and protect the business interests of a PPP. PPPs involve a business risk where there is a chance of both success and failure. Often when a project fails the most obvious reasons cast are that of corruption which may or not be the case. Honest officers face tremendous pressure of action by authorities and criticism for a decision that was taken in good interest. This has led to a situation of paralysis in decision making. There is a need therefore for awareness on this aspect including on aspects of what corruption entails. Secondly there may be a need for a risk indicator at the outset of a project which identifies the various risks to the project. These may include many risks among which corruption is only one. An analysis against this risk indicator at the time of evaluation of a project will help to identify more clearly the reasons for failure. Risk evaluation at identified milestones of a project shall also assist to mitigate and prevent the impact of these risks at an early stage.
2. Related to the above and in order to identify risks there may also be a corruption risk register that may identify for projects or sectors areas or activities of vulnerability. Risk assessments should be undertaken as part of the main areas of potential corruption: rigged specifications and procedures; collusive bidding; false claims and statements; failure to meet specifications, including use or supply of substandard or counterfeit materials; co-mingling of contracts; false invoices; duplicate contract payments; contract variation misuse, split purchases and phantom contractors. Greater vigilance may be paid to these steps or activities.
3. A need to broaden the definition of public official to include private sector officials operating under PPPs so as to make them accountable and liable to a number of legal provisions currently applicable only to public officials.
4. With respect to conflict of interest as applicable to public officials, put in place stipulations that besides employment, no other forms of engagement (advisory with retainer, subcontract) can exist between former government officials and the private sector without explicit permission from the concerned department authorities or until 2 years from the last date of government service.
5. Need for asset declaration requirements of all public officials involved in procurement. While there are provisions in place for this, there is a need to place it on high priority and for its stronger implementation in relation to public officials involved in procurement.



6. Need for risk assessments and greater selection procedures to certain posts or offices such as those involved in procurement. These may include: pre-appointment screening of successful candidates (ensuring that the potential appointee has already demonstrated high standards of conduct); specific terms and conditions of service for successful candidates; procedural controls, such as benchmarking performance, or the rotation of staff, as means of limiting inducements to and effects of corruption arising from protracted incumbency. There should be support and oversight procedures for employees in positions that are especially vulnerable to corruption, including regular appraisals, confidential reporting, registration and declaration of interests, assets, hospitality and gifts.
7. While e-procurement is an important measure to enhance transparency in procurement processes it should not be mistaken as the only measure. There is a need for a comprehensive approach to enhance objectivity, transparency and competition in public procurement and so too in PPPs.

#### **Additional recommendations from the Working Group participants:**

Providing for a system for independent regulation of PPP contract implementation would further strengthen the framework for anti-corruption, by improving scrutiny and transparency of the process. The Draft National PPP policy advocates the setting up of a regulatory mechanism that would be activated subsequent to a PPP contract execution. Strong audit mechanisms have also been recommended for implementation to strengthen the governance processes. In addition there would be a tender evaluation committee that would be formed by the contracting authority with multiple stakeholder participation (Ministry of Finance, Head of the contracting authority, PPP cell representative etc.). There would be an independent monitor to oversee the process and ensure compliance with the rules that have been laid out.

*\*It may be noted that some of these recommendations may have already been taken up in the PP bill and Draft Rules for PPP. However, since they were strong recommendations from the members of the working group it requires a mention nevertheless. In many instance its also implies a need for strong implementation in practice if they have been included in legislation.*



## 4. State Legislation

**Many Indian states follow PPPs.** Department of Economic Affairs, Ministry of Finance has prepared the draft National PPP Policy. Every state and ministry follows their own procurement with GFR 2005 forming the main rules for procurement which can be used by the central and the state governments. Most states do not have a legislation to regulate public procurement or PPPs. It has also been seen that while the National Policy prescribes certain forms of PPP, there are different practices followed at state levels. The List A below provides a view of the number of PPPs and values of these projects.<sup>9</sup> List B provides a status on the existence of a PPP or public procurement legislation in the top 10 states having the highest value of PPPs.

### List A:

| State             | Total Number of Projects | Value of Contracts (Crore rupees) |
|-------------------|--------------------------|-----------------------------------|
| Andhra Pradesh    | 96                       | 66,918                            |
| Maharashtra       | 78                       | 45,592                            |
| Karnataka         | 104                      | 44,659                            |
| Gujarat           | 63                       | 39,637                            |
| Uttar Pradesh     | 14                       | 26,596                            |
| Kerala            | 32                       | 22,282                            |
| Tamil Nadu        | 43                       | 18,629                            |
| Sikkim            | 24                       | 17,111                            |
| Rajasthan         | 59                       | 15,027                            |
| Madhya Pradesh    | 86                       | 14,983                            |
| Orissa            | 27                       | 13,350                            |
| Delhi             | 13                       | 11,317                            |
| Haryana           | 10                       | 11,163                            |
| Inter State       | 14                       | 9,568                             |
| West Bengal       | 30                       | 6,617                             |
| Jammu and Kashmir | 3                        | 6,320                             |
| Punjab            | 29                       | 3,563                             |
| Puducherry        | 2                        | 3,367                             |
| Bihar             | 6                        | 2,094                             |
| Jharkhand         | 9                        | 1,704                             |
| Chhattisgarh      | 4                        | 838                               |
| Meghalaya         | 2                        | 762                               |
| Uttarakhand       | 2                        | 521                               |
| Assam             | 4                        | 391                               |
| Goa               | 2                        | 250                               |
| Chandigarh        | 2                        | 75                                |
| <b>Total</b>      | <b>758</b>               | <b>383,332</b>                    |

<sup>9</sup>Government website- <http://www.pppindiadatabase.com> – 2012 December.



## List B:

| State          | Value of Contracts | Legislation or policy                                                                                                                                                                                           |
|----------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Andhra Pradesh | 66,918             | 2008: Andhra Pradesh cabinet approved creation of the AP public procurement bill to bring about more transparency in procurement procedures. However, a final legislation is still awaited.                     |
| Maharashtra    | 45,592             | NA                                                                                                                                                                                                              |
| Karnataka      | 44,659             | Karnataka Transparency in Public Procurement Act 1999 (KTPP Act).                                                                                                                                               |
| Gujarat        | 39,637             | NA                                                                                                                                                                                                              |
| Uttar Pradesh  | 26,596             | NA                                                                                                                                                                                                              |
| Kerala         | 22,282             | Kerala Transparency in Public Purchase Bill, 2002                                                                                                                                                               |
| Tamil Nadu     | 18,629             | The Tamil Nadu Transparency in Tenders Act, 1998.<br>The Tamil Nadu Transparency in Tenders Rules, 2000.<br>and<br>The Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012. |
| Sikkim         | 17,111             | NA                                                                                                                                                                                                              |
| Rajasthan      | 15,027             | 1. Rajasthan Transparency in Public procurement Act, 2012 .<br>2. Rajasthan Public Procurement Rules 2013<br>3. Public-Private Partnership Policy 2008                                                          |
| Madhya Pradesh | 14,983             | NA                                                                                                                                                                                                              |

\*The above table has been developed from inputs given by working group participants and information received from different national institutions.



## 4.1. Assessment of legislation and policy in the pilot state – Karnataka:

As part of this report, the State of Karnataka was chosen as a pilot state of study. Karnataka was among the first state in India to introduce legislation in the context of public procurement through the ‘Karnataka Transparency in Public Procurement Act 1999 (KTPP Act)’. Upon review, it was found that this Act contains relevant stipulations that address many of the requirements of UNCAC. Karnataka also has a PPP policy largely aligned to the draft national policy.

Table 2 provides an outline of the compliance of KTPP Act to article 9 of the UNCAC.

Karnataka’s legislation for procurement is largely compliant to article 9 of the UNCAC, with a scope to strengthen compliance specifically, to article 9.1(e)

**Institutional Framework** – The Government of Karnataka has set up a “PPP Cell” in the Infrastructure Development Department (IDD) in 2007. The PPP Cell is headed by the Principal Secretary, IDD. The PPP Cell is the nodal agency to receive proposals in respect of Public Private Partnership (PPP) projects and place them before the single window agency (SWA) for consideration and approval of projects upto INR 500 million and to recommend projects above INR 500 million to the State High Level Committee. The PPP Cell also helps various state departments/agencies in different stages of the project development cycle.

**Table 2:** Compliance of KTPP Act with UNCAC article 9:

| UNCAC Article                                                                                                                                                 | Domestic Regulatory Mechanism                                                                   | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Art 9.1. Appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making effective in preventing corruption. | The Karnataka Transparency in Public Procurement Act, 1999 - Sec 3, 4, 5, 6, 7, 8, 15, 17 & 18. | <b>Compliant</b> -Provisions of the KTPP Act provide for the essentials as outlined by the UNCAC. <ul style="list-style-type: none"> <li>• Exceptions to applicability of the Act are clearly outlined.</li> <li>• There is a well-defined organisational structure for procurement.</li> </ul> The state government is invested with powers to call for records and obtain information.                                                                                                                                                                                                        |
| Art 9.1. (a) – Systems to contain public distribution of information relating to procurement procedures and contracts.                                        | The Karnataka Transparency in Public Procurement Act, 1999 - Sec 8 & 12.                        | <b>Compliant</b> - Section 8 of the KTPP Act mandates that the Tender Inviting Authority shall provide for the publication of notices with regard to information on tendering, acceptance or rejection of tenders through the Tender Bulletin Officer, as per directions contained in the Act. Chapter III of the ‘Karnataka Transparency in Procurement Rules 2000’ provides greater details associated with public distribution of information pertaining to procurement. The Tender Inviting Authority, recognised under the Act, is to conduct communications regarding tendering activity. |



| UNCAC Article                                                                                                                                                | Domestic Regulatory Mechanism                                                              | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Art 9.1 (b) The establishment, in advance, of conditions for participation including selection and award criteria and tendering rules and their publication. | The Karnataka Transparency in Public Procurement Act, 1999 - Sec 6, 7, 10, 11, 12, 13, 14. | <p><b>Compliant</b> - The Act lays down procedure to be followed by established tendering organisational structure during the tendering process.</p> <p>Chapters IV, V and VI of the Rules establish compliance to article 9.1(b).</p> <p>Furthermore, the Tender Accepting Authority is enabled to establish a Tender Scrutiny Committee for projects above INR 50 million in Public Works, Irrigation and Minor Irrigation and for projects above INR 10 million in other cases. There has to be a record of a reasoned acceptance of tenders.</p>                                                                                                                                                                                                                                                      |
| Art 9.1 (c) The use of objective and predetermined criteria for public procurement decisions.                                                                | The Karnataka Transparency in Public Procurement Act, 1999 - Sec 10, 13 & 15.              | <p><b>Compliant</b> - The need to have pre-determined and objective criteria for decision making in public procurement is well illustrated by the mechanism contained in the KTPP Act. Vide sec 13; a comparative analysis of the accepted tender must accompany the acceptance of tender. The government is empowered to issue directions to ensure transparency in the procurement process within the state.</p> <p>Section 13 also requires the Tender Accepting Authority to provide comparative analyses of bids to the Tender Bulletin Officer. This ensures a transparent evaluative mechanism where a public record of decision making is to be provided. Chapter VI of the Karnataka Transparency in Public Procurement Rules, 2000 provides for a detailed procedure of evaluation of bids.</p> |
| Art 9.1 (d) An effective system of domestic review, including an effective system of appeal                                                                  | The Karnataka Transparency in Public Procurement Act, 1999 - Sec 16, 17, 18, 21, 22 & 23   | <p><b>Compliant</b> - Sec 16 provides for appeal from decisions under Sec 13 of a Tender Accepting Authority. Contravention of the Act can be punished with imprisonment of up to three years and a fine of up to INR 3,000/-.</p> <p>Further and in keeping with the mandate for a review and appellate mechanism in article 9.1(d), the KTPP Act provides for appeals under section 16. An appellate authority has been constituted to hear appeals from procurement decisions arising out of the application of the Act. The procedure for the same is detailed in Chapter VII of the KTPP Rules, thereby establishing compliance with article 9.1(d) of the UNCAC.</p>                                                                                                                                |



| UNCAC Article                                                                                                                                                                                                                  | Domestic Regulatory Mechanism                                                      | Compliance between UNCAC and Domestic Regime                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Art 9.1 (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements | The Karnataka Transparency in Public Procurement Act, 1999 - Sec 7, 9, 10, 11 & 12 | <p><b>Compliant</b> - The Act recognizes procuring entities as Tender Inviting Authority &amp; Tender Accepting Authorities.</p> <p>A Tender Scrutiny Committee has been established to objectively evaluate bids. This committee also ensures regulation of personnel associated with the procurement process, thereby complying with article 9.1(e) of the UNCAC. However currently, there are no specifics available with respect to screening procedures, declaration of interest and training requirements for the Tender Bulletin Officer, members of the Tender Scrutiny Committee, as well as members of the Tender Accepting Authority.</p> |



## 5. Grassroot Challenges, Current Practices and Training needs

Comprehensive legislation at the central and state levels is essential in ensuring transparent and objective rules and procedures for procurement. Equally important is the need for strong and consistent implementation of legislation. Many practices followed on the ground may be divergent from what is legally prescribed, due to limited governance and accountability, process and monitoring inefficiencies, limited awareness, and the mind sets of organizational cultures etc.

Whilst effective implementation of legislation will help to address many of the challenges, legislation alone is not adequate; a combination of mechanisms reinforced over time is required to establish total compliance to UNCAC.

Below is a set of some issues faced during procurement and execution of the PPP projects and suggestions to address them. These challenge and response mechanisms emerged from Working Group discussions, as well as responses from the survey on grassroot challenges, current practices and training needs. This is not an exhaustive list but a brief summary is provided below:

### **Issues encountered during PPP projects:**

- Objective laws being interpreted subjectively in practice.
- Winners identified before procurement process leading to partiality and laxity in establishing specifications to suit specific bidders.
- Bribing of government officials to obtain certain contracts.
- Cartel formation to suppress competition and other coercive practices.
- Limited skills of consultants or personnel in a PPP project to detect corrupt practices and limited liability of consultants.
- Integrity of external consultants.
- Physical threats to bidders.
- Tampering or loss of records.
- Subjectivity at all stages leading to the award of contract.
- Subversion of procedures under the excuse of 'Suitable bidders not available'.
- Loopholes and vulnerability to corruption after contract is awarded.
- Challenges arising from mergers and acquisitions.
- Inconsistencies in vocabulary and lack of standardizations in key definitions and terms.
- Too many stages in public procurement process leading to vulnerable.



## 5.1. Responses from the survey analysis on grassroots challenges, current practices and training needs:

Following is the information extracted from the PPP survey responses. It includes responses from both the government and private sector officials:

### 5.1.1 Vulnerabilities to corruption in PPP practice and challenges:

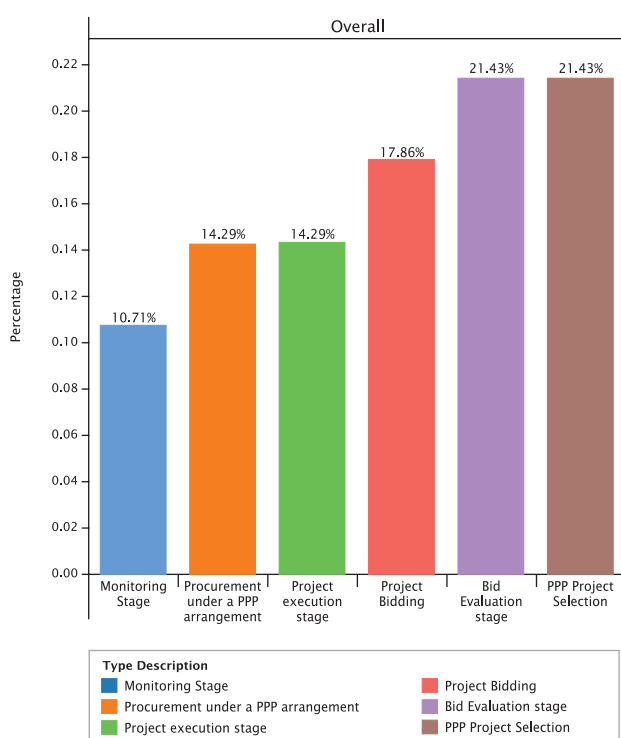
#### 1. What are the stages that may be vulnerable to corruption?

| Private company survey options:                                                                                                                                                                                                                    | Government survey options:                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• PPP project selection</li> <li>• Project bidding</li> <li>• Bid evaluation stage</li> <li>• Project execution stage</li> <li>• Monitoring stage</li> <li>• Procurement under a PPP arrangement</li> </ul> | <ul style="list-style-type: none"> <li>• PPP project selection</li> <li>• Project bidding</li> <li>• Bid evaluation stage</li> <li>• Project execution stage</li> <li>• Monitoring stage</li> </ul> |

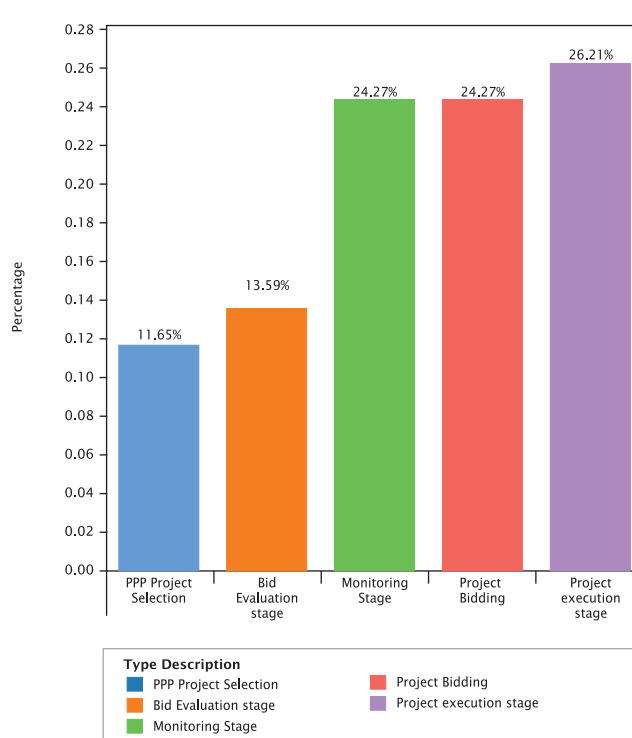
#### Analysis:

- Project selection was identified as the most vulnerable stage by 21% approximately of the respondents private sector.
- Most respondents from the government sector shared that project execution is the most vulnerable stage followed by project bidding 26% approximately.

#### Responses from private sector companies:



#### Responses from government officials:





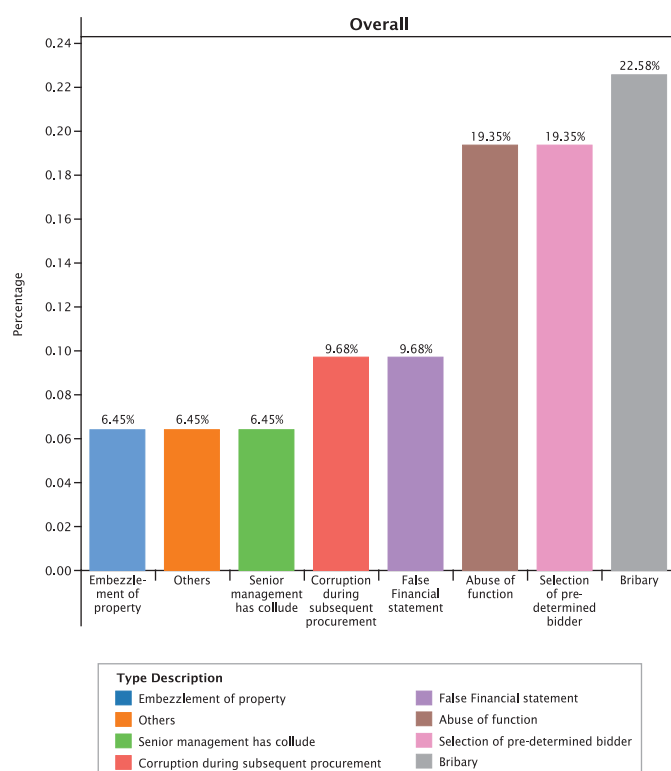
## 2. In what form could corruption take place under a PPP?

| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                  | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Bribery</li> <li>• Abuse of function</li> <li>• Embezzlement of property/assets</li> <li>• Selection of pre-determined bidder</li> <li>• Corruption during subsequent procurement that takes place i.e. during project execution.</li> <li>• False and incorrect financial statements to misrepresent actual revenue.</li> <li>• Senior management of company has colluded</li> <li>• Others</li> </ul> | <ul style="list-style-type: none"> <li>• Collusion between company and local politicians</li> <li>• Tender evaluation committee members collusion with the company</li> <li>• Misrepresentation of facts(financial, experience, etc.) by the bidders in the tender response document</li> <li>• Misrepresentation by the concessionaire* to avoid revenue sharing with the government</li> <li>• Independent consultant responsible for quality inspection colludes with the concessionaire</li> <li>• Others</li> </ul> |

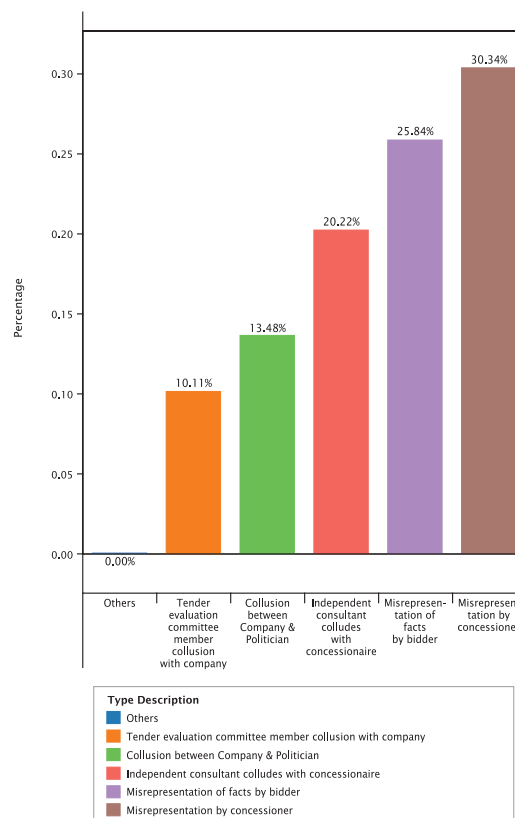
### Analysis:

- Bribery was identified by the highest number of respondents of the private sector (23%). This can be in the form of cash or kind.
- Majority of the respondents (30%) from government believed that the most common form of corruption is when concessionaire\* avoids revenue sharing with the government. This was followed by misrepresentation of facts by the bidders where they misrepresent their credentials and financial position in order to win the contracts.

#### Responses from private sector companies:



#### Responses from government officials:



\*Concessionaire – means the entity to which a PPP project is awarded in accordance with the PPP rules – Draft PPP rules 2011.



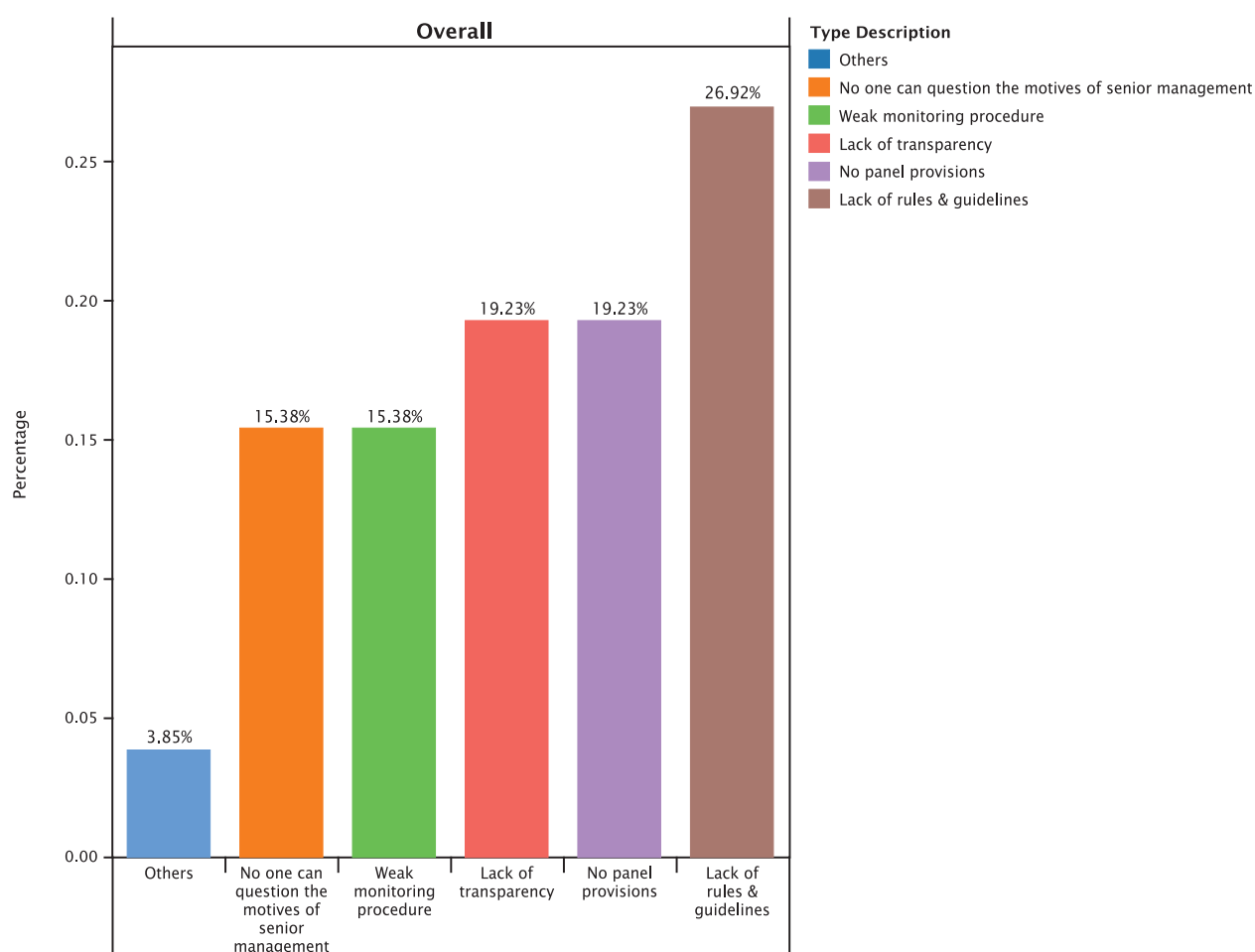
### 3. What are the possible reasons of this corruption?

| Private company survey options:                                                                                                                                                                                                                                                                    | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Weak monitoring procedures</li> <li>• Lack of transparency in bid screening procedure</li> <li>• Lack of rules and guidelines</li> <li>• No penal provisions</li> <li>• No one can question the motives of senior management</li> <li>• Others</li> </ul> | <ul style="list-style-type: none"> <li>• Weak monitoring procedures</li> <li>• Lack of transparency in bid screening procedure</li> <li>• Lack of rules and guidelines</li> <li>• No penal provisions to act as deterrence (for private sector, etc.)</li> <li>• Poor grievance redressal</li> <li>• No organisation would like to report violations and jeopardize career/ business.</li> <li>• Lack of due diligence on the bids submitted by the Tender Evaluation Committee.</li> <li>• Others</li> </ul> |

#### Analysis:

- Lack of rules was identified as the prime reason for corruption by the highest number of respondents approximately (27%) from the private sector.

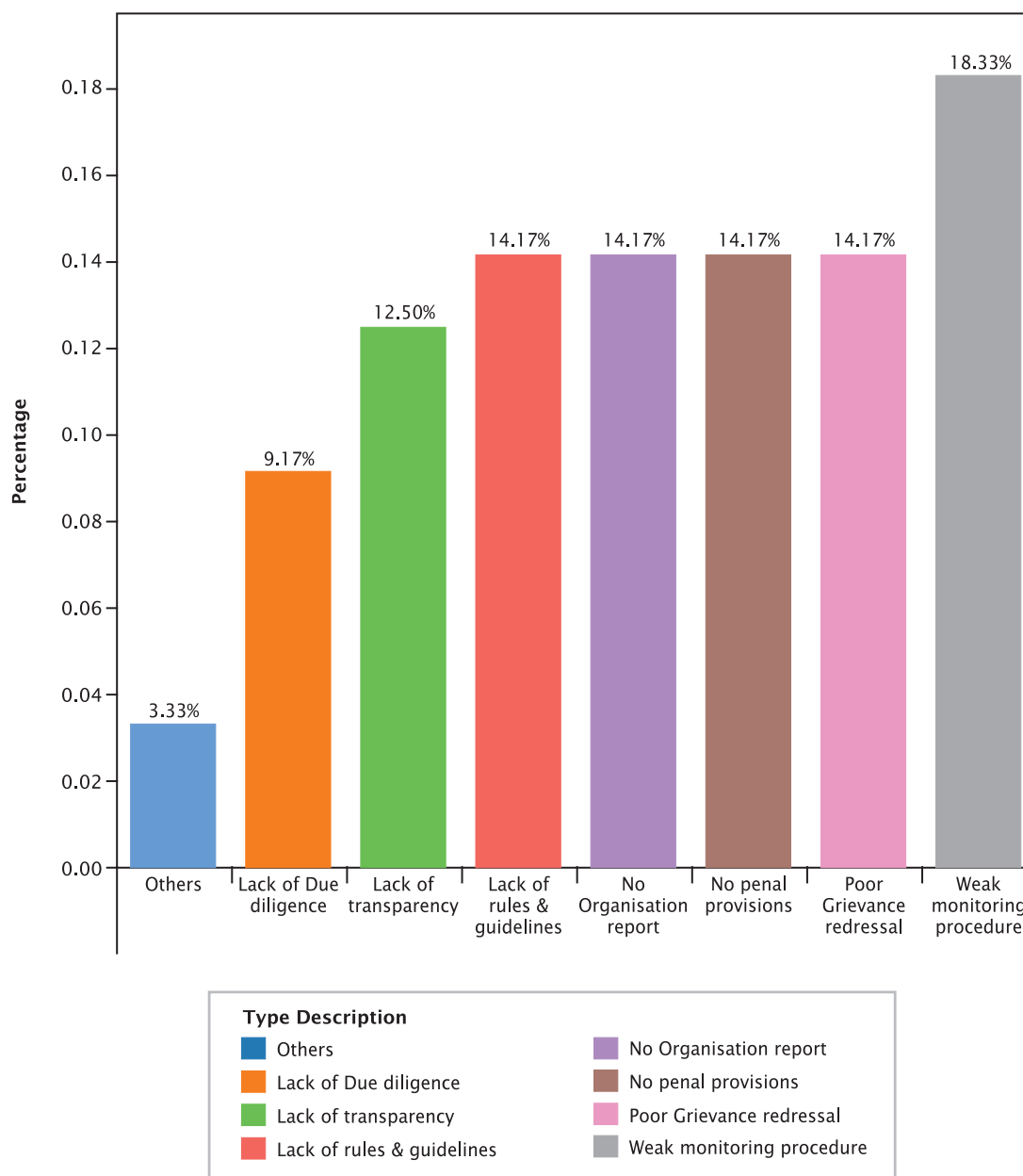
#### Responses from private sector companies:





- The majority of government respondents identified weak monitoring procedures as a reason for corruption at both the procurement and project management stages.

### Responses from the government:





#### 4. What are the consequences of corruption to a PPP project or business organization?

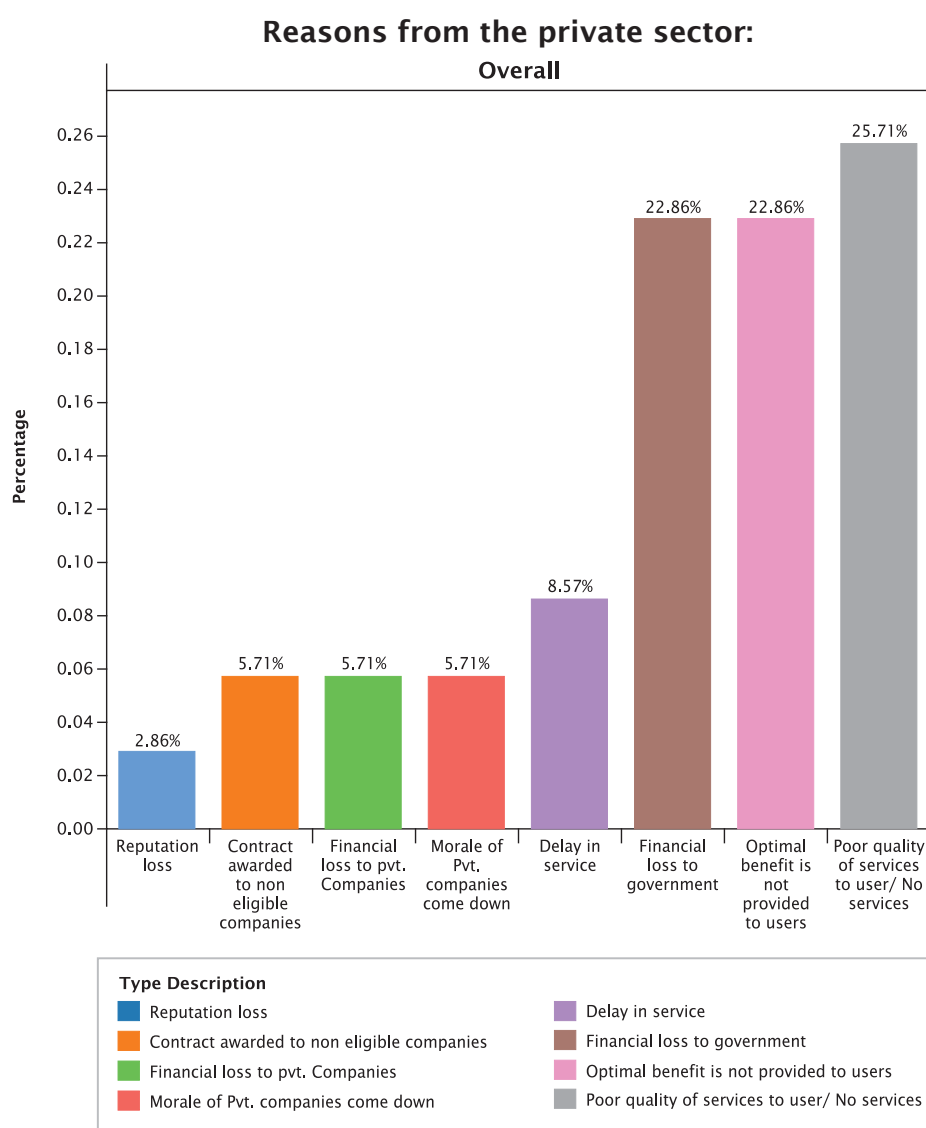
*\*This questions was only asked from private sector officials.*

##### Private company survey options:

- Contract awarded to non-eligible companies
- Optimal benefit is not provided to users
- Financial loss to government
- Poor quality of service or no service to users
- Delay in delivery of services
- Reputation loss to the stakeholders (private company, govt., country)
- Financial loss to the private company
- Morale of private companies come down

##### Analysis:

- Poor quality of service or no service to users was identified as a consequence of corruption in a PPP project.

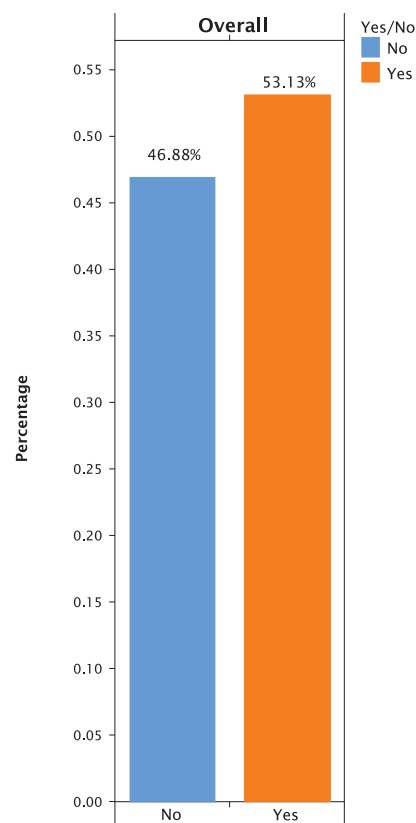




5. We understand that experience and training are the key strengths that would facilitate a positive Public private partnership (PPP) experience for all stakeholders. Have you been trained in procurement?

#### Response & Analysis:

- A large portion of the respondents (~47%) are not trained in procurement.
- Responses from government indicated only one third of the respondents were trained on procurement.



6. Competition is critical to ensure the success of the PPP process. Based on your knowledge and understanding, what are the factors that may result in competition being limited?

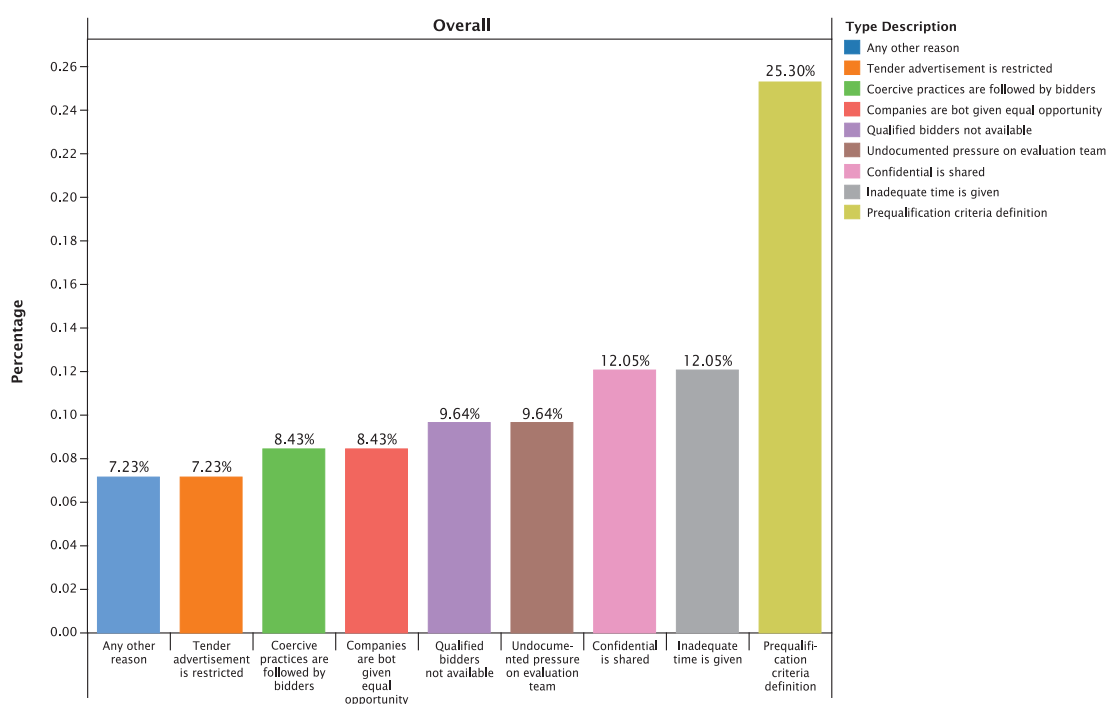
| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Prequalification criteria are defined in a way to suit one or a few favoured companies.</li> <li>• There is an undocumented pressure on or reference to the evaluation team to select a favoured company.</li> <li>• The tender advertisement is restricted to one or a few companies.</li> <li>• Qualified bidders are not available.</li> <li>• Coercive practices are followed by bidders, who exert pressure on not bidding.</li> <li>• Confidential (commercial, technical, etc.) information is shared with the favoured company. Therefore, lack of information discourages others from participating in the tender.</li> <li>• Companies are not given an equal opportunity to get clarifications on the response document.</li> <li>• Inadequate time is given to companies to respond to a tender.</li> <li>• Any Other Reason</li> </ul> | <ul style="list-style-type: none"> <li>• Prequalification criteria are defined in a way to suit one or a few favoured companies.</li> <li>• There is an undocumented pressure on or reference to the evaluation team to select a favoured company.</li> <li>• The tender advertisement is restricted to one or a few companies.</li> <li>• Qualified bidders are not available.</li> <li>• Coercive practices are followed by bidders, who exert pressure on not bidding.</li> <li>• Confidential (commercial, technical, etc.) information is shared with the favoured company. Therefore, lack of information discourages others from participating in the tender.</li> <li>• Inadequate time is given to companies to respond to a tender.</li> <li>• Any Other Reason</li> </ul> |



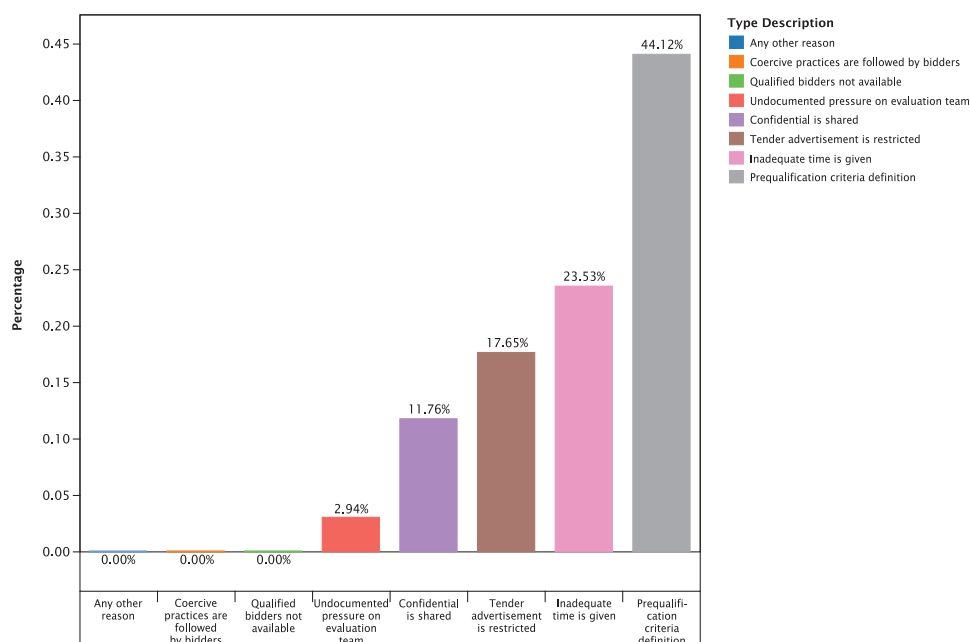
## Analysis:

- Maximum number of respondents from the private sector (~25%) selected the option that “Prequalification criteria are defined in a way to suit one or a few favoured companies.” Some respondents cited instances of private companies assisting government officials in creation of the prequalification criteria. It is important to note that in government survey, majority of the respondents (44%) also selected the same option.
- Justification of ‘Qualified bidders are not available’ to modify procedures was selected by ~10% of the respondents.

### Responses from the private sector:



### Responses from the government sector:





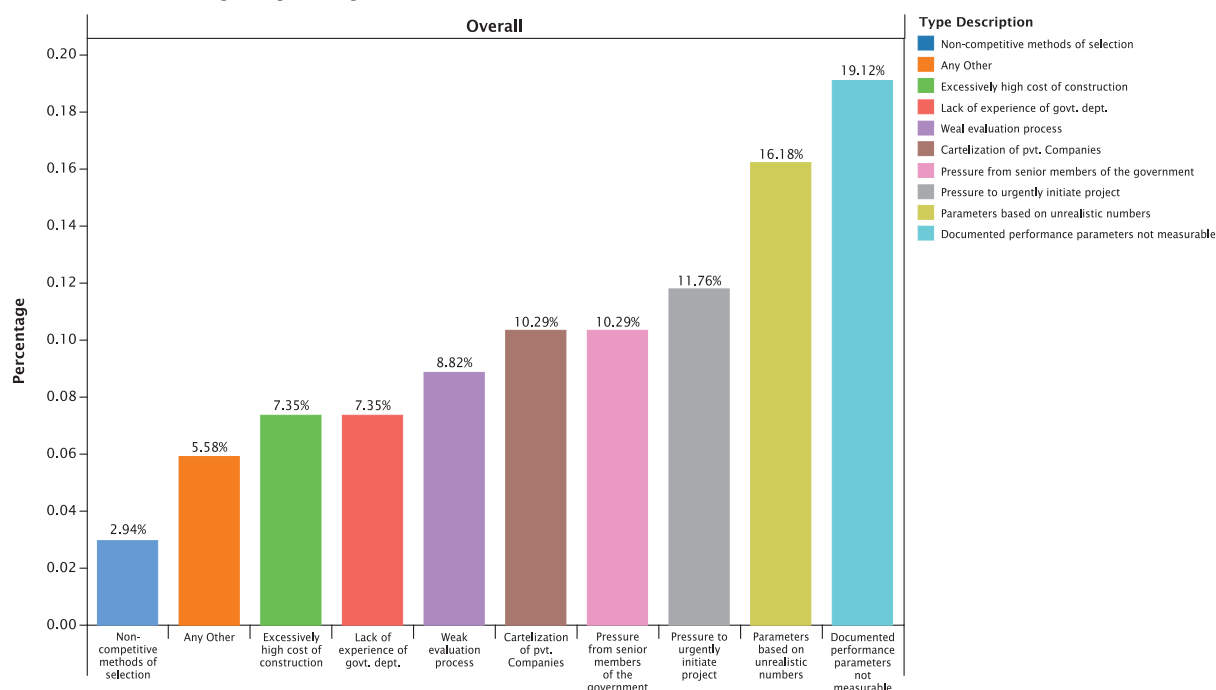
7. Concessioner agreements form the heart and soul of a PPP project. These agreements set the boundaries and expectations for all stakeholders in the project. It is therefore critical to ensure that these agreements do not have deficiencies or are not lax on the operational efficiency parameters of the concessioner. Based on your knowledge, how are operational efficiency parameters relaxed, approved and documented in an agreement?

| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Parameters based on unrealistic numbers or return on investment arguments</li> <li>Excessively high cost of construction or “cost padding”</li> <li>Non-competitive methods of selection</li> <li>Pressure from senior members of the government</li> <li>Pressure to urgently initiate project</li> <li>Cartelization of private companies</li> <li>Weak evaluation process</li> <li>Lack of experience and knowledge of government department while drafting contract agreement (or lack of model concessioner agreement)</li> <li>Documented performance parameters not measureable or reliable</li> <li>Any other methodology</li> </ul> | <ul style="list-style-type: none"> <li>Parameters based on unrealistic numbers or return on investment arguments</li> <li>Excessively high cost of construction or “cost padding”</li> <li>Non-competitive methods of selection</li> <li>Pressure from senior members of the government</li> <li>Cartelization of private companies</li> <li>Weak evaluation process</li> <li>Lack of experience and knowledge of government department while drafting contract agreement (or lack of model concessioner agreement)</li> <li>Any other methodology</li> </ul> |

### Analysis:

- Majority of respondents from the private sector (19%) pointed out that “Documented performance parameters are not measureable or reliable”.

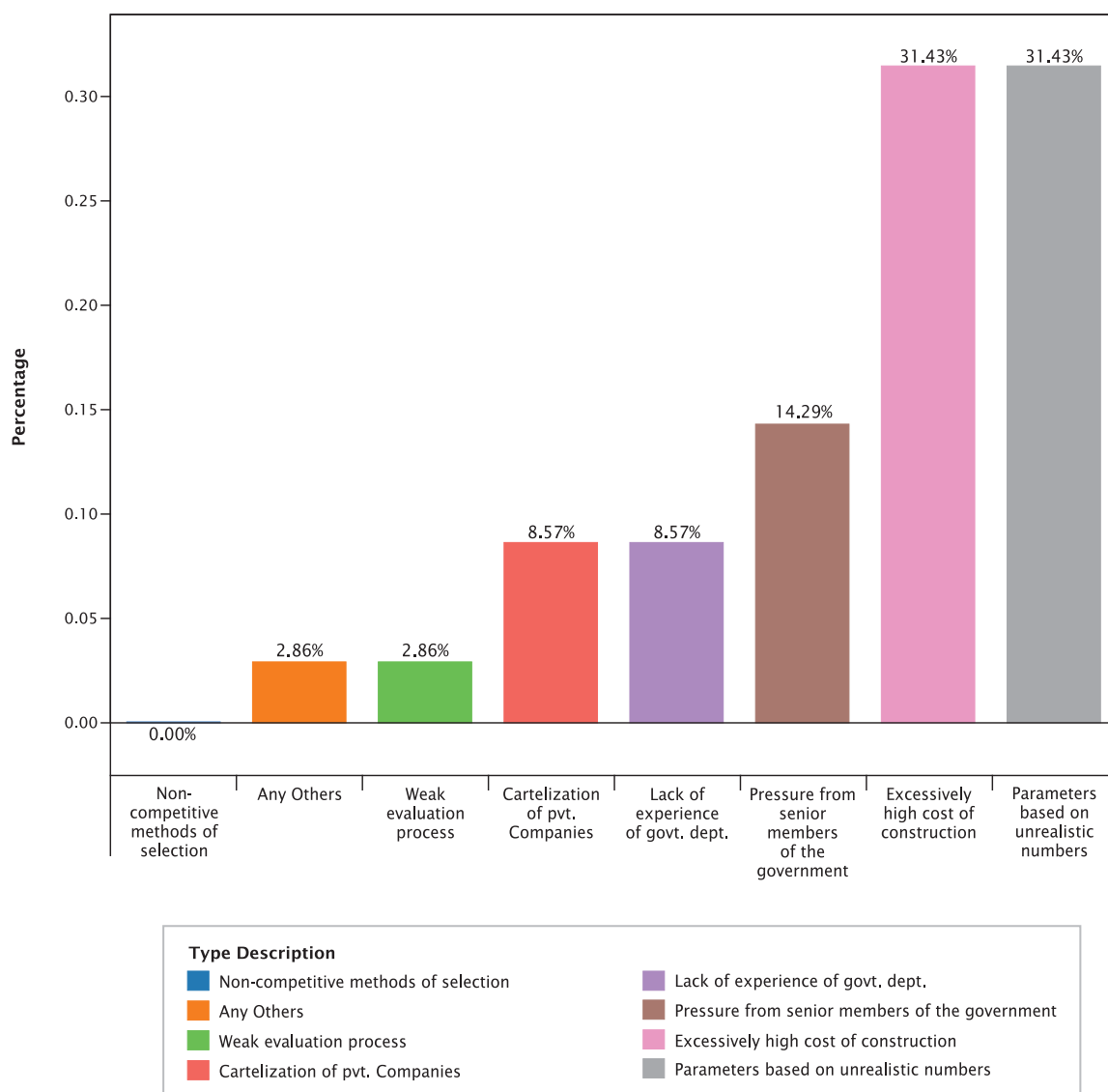
### Private company responses:





- The second highest responses (16%) mentioned were: “Parameters are based on unrealistic numbers or return on investment arguments”. It seems that measurement parameters are based on unrealistic numbers therefore they are not measurable / reliable.
- “Non-competitive methods of selection” got the least number of responses (3%) which shows that competitive methods are used by the prequalification criteria and is used to control the competition.
- Government survey responses were also on similar lines where majority of the respondents (31%) identified “Parameters based on unrealistic numbers or return on investment arguments” and “cost padding” as reasons for relaxed operational parameters.

### Response from the government sector:





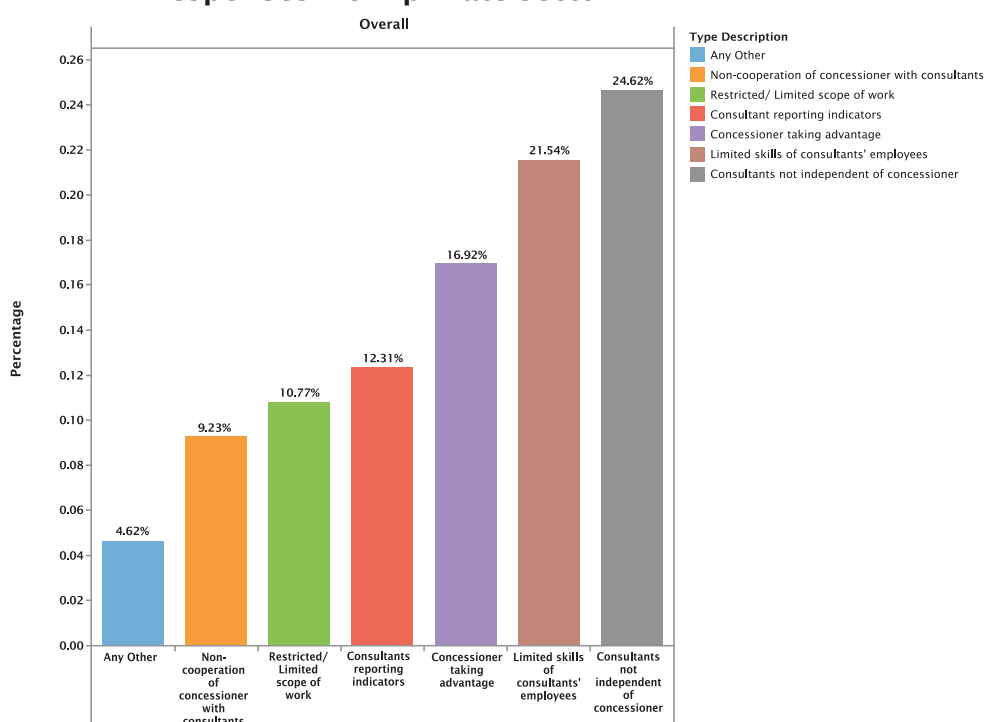
8. The government has decided to work with independent external consultants to check leakages and monitor integrity during execution or monitoring of PPP projects. There have been instances of integrity violations during the execution stage. Based on your experience, what are the key reasons for independent external consultants not being able to detect such integrity issues at the execution or monitoring stage?

| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Restricted or limited scope of work of independent external consultants</li> <li>Consultants not independent of concessioner</li> <li>Limited skills of consultants' employees in detection of fraud or corruption- related issues</li> <li>Non-cooperation of concessioner with consultants</li> <li>Consultants reporting indicators of fraud or corruption, these not being followed up by the government department</li> <li>Concessioners taking advantage of the weakness in a signed concessioner agreement (contract)</li> <li>Any other reason</li> </ul> | <ul style="list-style-type: none"> <li>Restricted or limited scope of work of independent external consultants</li> <li>Consultants not independent of concessioner</li> <li>Limited skills of consultants' employees in detection of fraud or corruption- related issues</li> <li>Non-cooperation of concessioner with consultants</li> <li>Concessioners taking advantage of the weakness in a signed concessioner agreement (contract)</li> <li>Any other reason</li> </ul> |

#### Analysis:

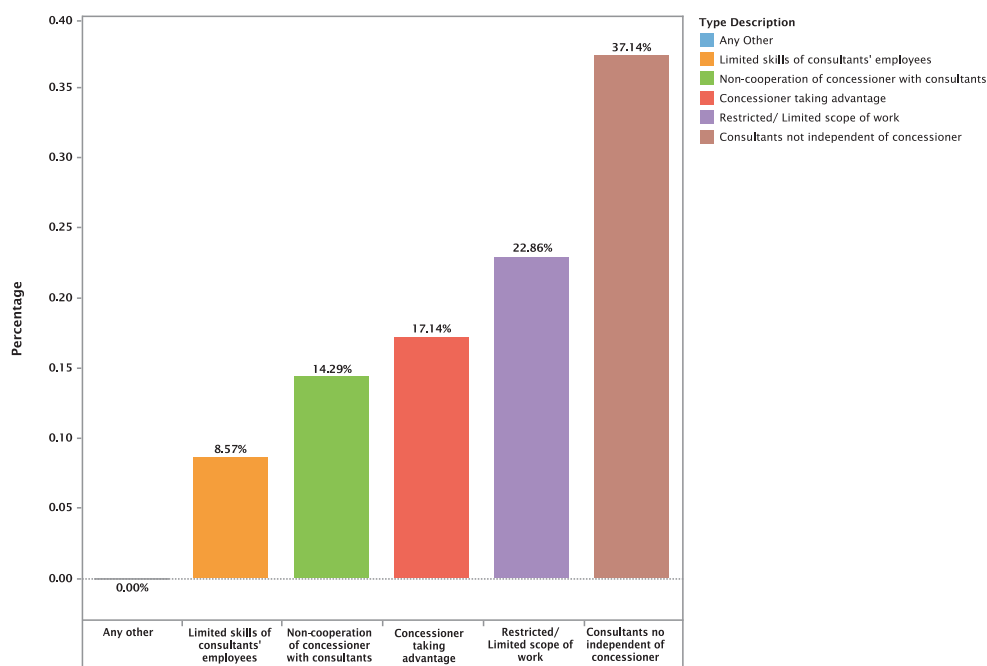
- Majority of respondents (25%) from the private sector believe that “Consultants are not independent of the concessioner”. Government survey responses were on similar lines where, majority of the respondents (37%) highlighted the same reason. This might be one of the reason that majority of the respondents (30%) believed that most common form of corruption is when concessionaires avoid revenue sharing with the government.
- It is important to note that as per the responses, consultants do get cooperation from the concessioner (Non-cooperation of concessioner with consultants - 9%). ‘Limited skills of consultants’ employees in detection of corruption- related issues” (22%) also emerged as another significant factor.

#### Responses from private sector:





## Responses from the government:



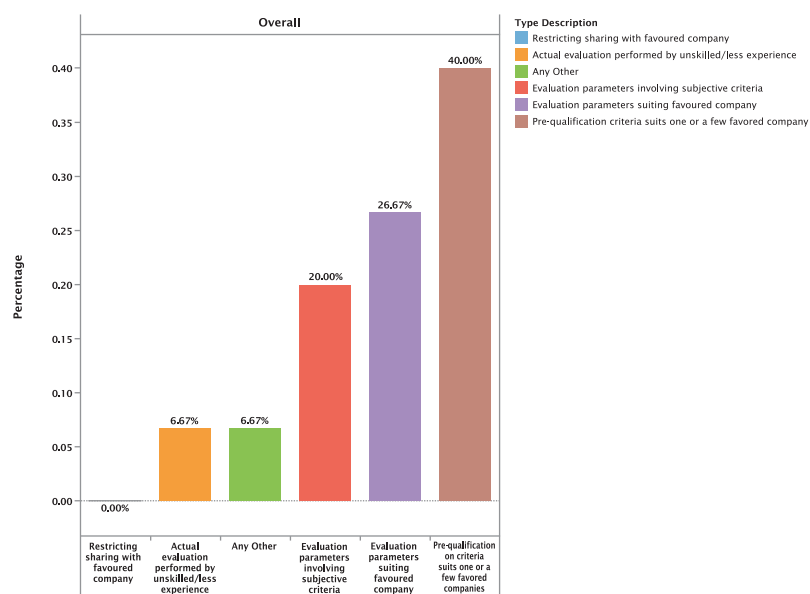
## 9. As a private sector organization, what are some of the concerns that you might have when entering into a PPP with regard to corruption?

### Private company survey options:

- Prequalification criteria suits one or a few favoured companies.
- Evaluation parameters involving subjective criteria that are open to interpretation
- Evaluation parameters suiting favoured company
- Restricted sharing of policy, commercial or technical information with a favoured company
- Actual evaluation performed by unskilled personnel or those with lack of experience
- Others

### Analysis:

- Manipulation of prequalification criteria remains the largest worry of private sector, as pointed out by 40% of the respondents.
- The respondents were not worried about lack of skills in tender evaluation because they think that the decision to select a company is already taken prior to tender evaluation.





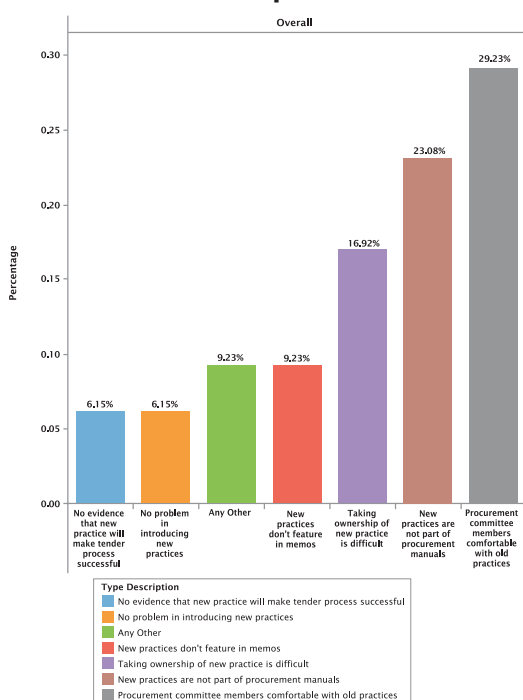
10. PPP is evolving in different sectors. Therefore, there is adequate scope for improvement in the way PPP process is conducted. It has been noted that it is sometimes difficult to introduce new practices in the procurement process. Based on your knowledge, what are the reasons that block innovation?

| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Procurement committee members are comfortable working with old practices and avoid change.</li> <li>There is no evidence to suggest that the new practice will make the tender process successful.</li> <li>New practices are not part of procurement manuals or guidelines.</li> <li>Taking ownership of introducing new practices is difficult.</li> <li>New practices do not feature in the memos or circulars in a department.</li> <li>There are no problems in introducing new practices.</li> <li>Any other reasons</li> </ul> | <ul style="list-style-type: none"> <li>Procurement committee members are comfortable working with old practices and avoid change.</li> <li>There is no evidence to suggest that the new practice will make the tender process successful.</li> <li>New practices are not part of procurement manuals or guidelines.</li> <li>Taking ownership of introducing new practices is difficult.</li> <li>New practices do not feature in the memos or circulars in a department.</li> <li>There are no problems in introducing new practices.</li> <li>Any other reasons</li> </ul> |

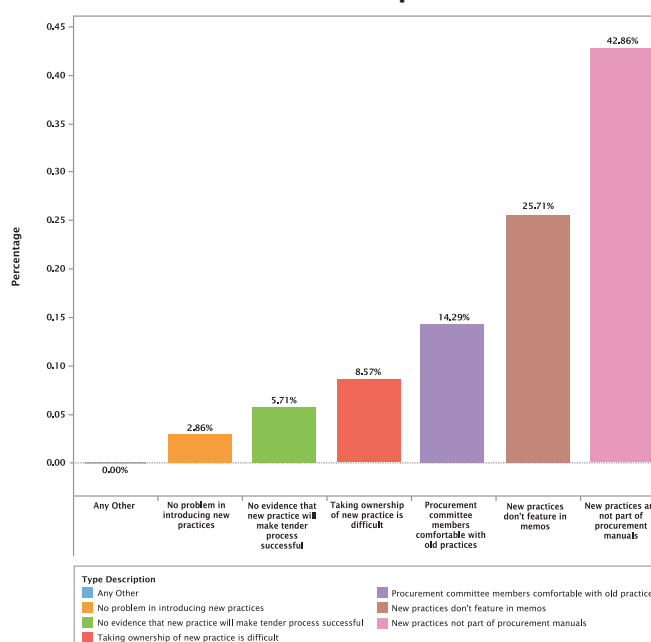
### Analysis:

- Maximum respondents (29%) from the private sector mentioned that “Procurement committee members are comfortable working with old practices and avoid change.”
- “New practices are not part of procurement manuals or guidelines” was pointed out by 23% of the respondents from amongst the private sector respondents.
- In case of government survey response too, majority of the respondents approximately (43%) shared that the new practices followed by different groups are not part of the procurement manuals or guidelines.

### Private sector responses:



### Government Sector responses:





## 5.1.2 Challenges in conflict resolution and grievance redressal:

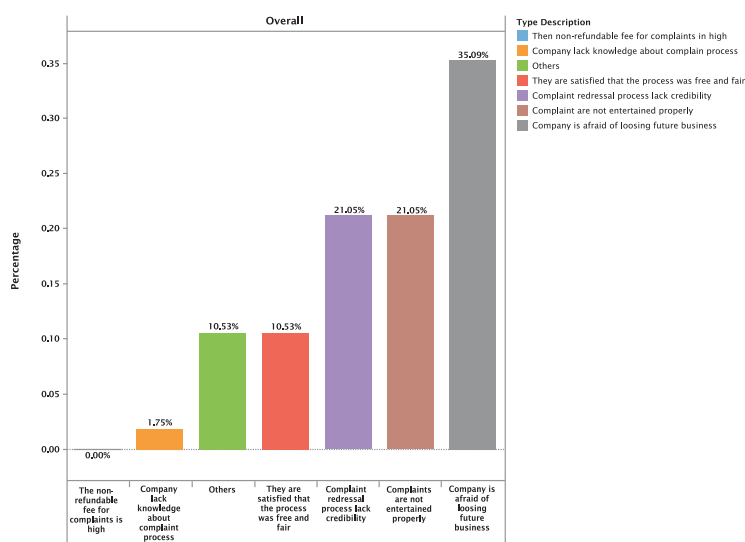
1. It has been noted that very few unsuccessful bidders lodge a formal complaint against the tender process (procurement). Based on your experience, why is an unsuccessful bidder hesitant to lodge a complaint or question the procurement process?

| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• They are satisfied that the process was free and fair.</li> <li>• The non-refundable fee for complaints is too high.</li> <li>• The company is afraid of losing future business.</li> <li>• The company lacks knowledge about the complaint process.</li> <li>• The complaint-redressal process of the government department lacks credibility.</li> <li>• Complaints are not entertained properly by the concerned government department.</li> <li>• Others</li> </ul> | <ul style="list-style-type: none"> <li>• Bidders are satisfied that the process was free and fair.</li> <li>• The non-refundable fee for complaints is too high.</li> <li>• Bidder is afraid of losing future business.</li> <li>• Bidder lacks knowledge about the complaint process.</li> <li>• The complaint-redressal process of the government department lacks credibility.</li> <li>• Complaints process takes long therefore a deterrent</li> <li>• Others</li> </ul> |

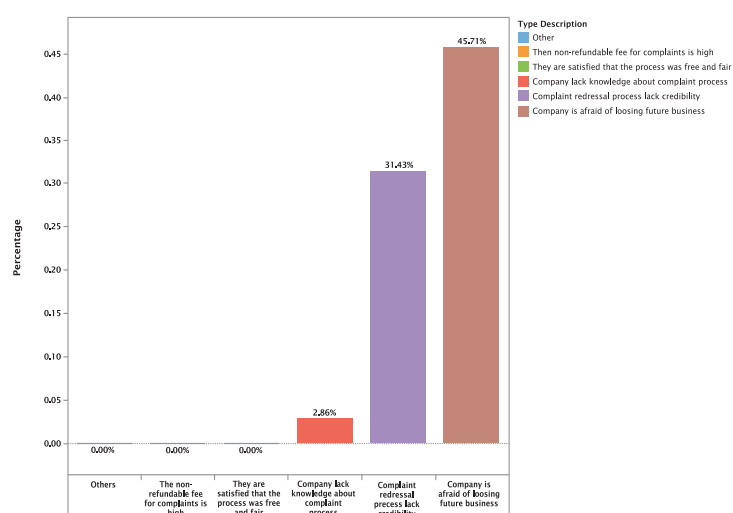
### Analysis:

- Majority of respondents (35%) from the private sector selected the option that “The Company is afraid of losing future business”. Similarly in the government survey, majority of the respondents (46%) highlighted the same reason.
- It is important to observe that “the company lacks knowledge about the complaint process,” option was selected by 2% of the respondents which shows that the companies know about the procedures but are afraid of losing business due to lack of confidence in government review procedures.
- In the case of government survey, 31% of respondents also shared that the government complaint review process lacks credibility. Fair and transparent complaint review process is important for healthy competition.

### Responses from the private sector:



### Responses from the government sector:





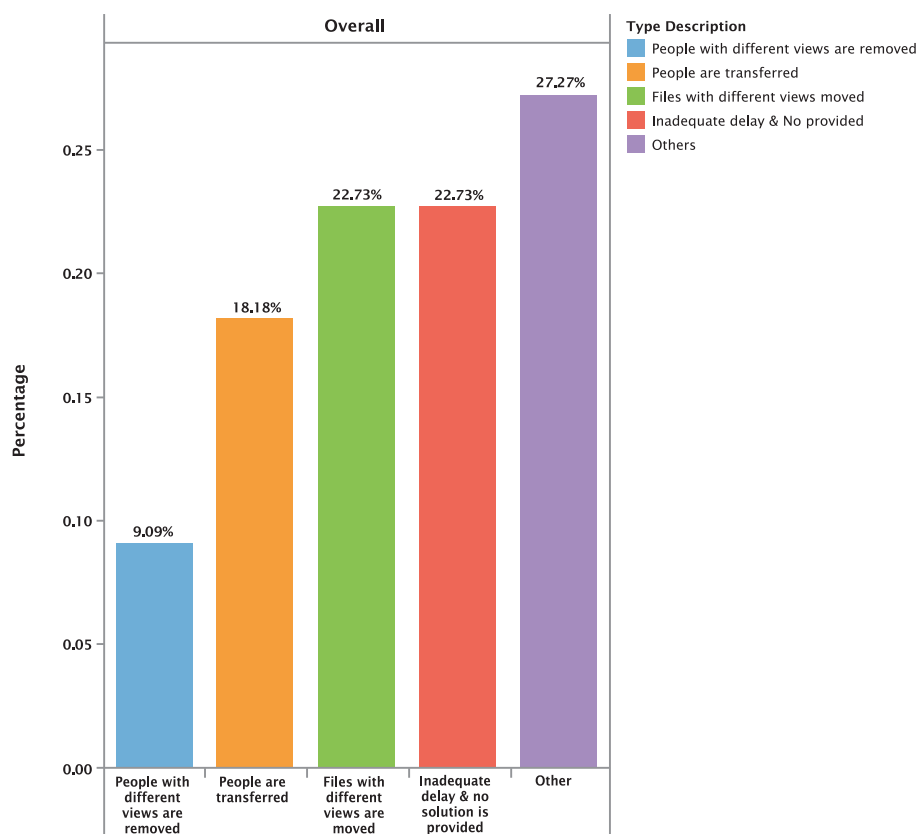
2. The members of the procurement team may differ on the results of the evaluation or on the selection of a private company. Based on your understanding, how are such differences managed and taken forward?

| Private company survey options:                                                                                                                                                                                                                                                                                                                           | Government survey options:                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• People with different views are removed from the bid evaluation process.</li> <li>• Such people are transferred to another department or location</li> <li>• Files with different views are moved</li> <li>• There is an indefinite delay and no solution is provided</li> <li>• Any other resolution</li> </ul> | <ul style="list-style-type: none"> <li>• People with different views are removed from the bid evaluation process. (for example, transferred to another department or location)</li> <li>• Files with different views are moved</li> <li>• There is an indefinite delay and no solution is provided</li> <li>• Any other resolution</li> </ul> |

### Analysis:

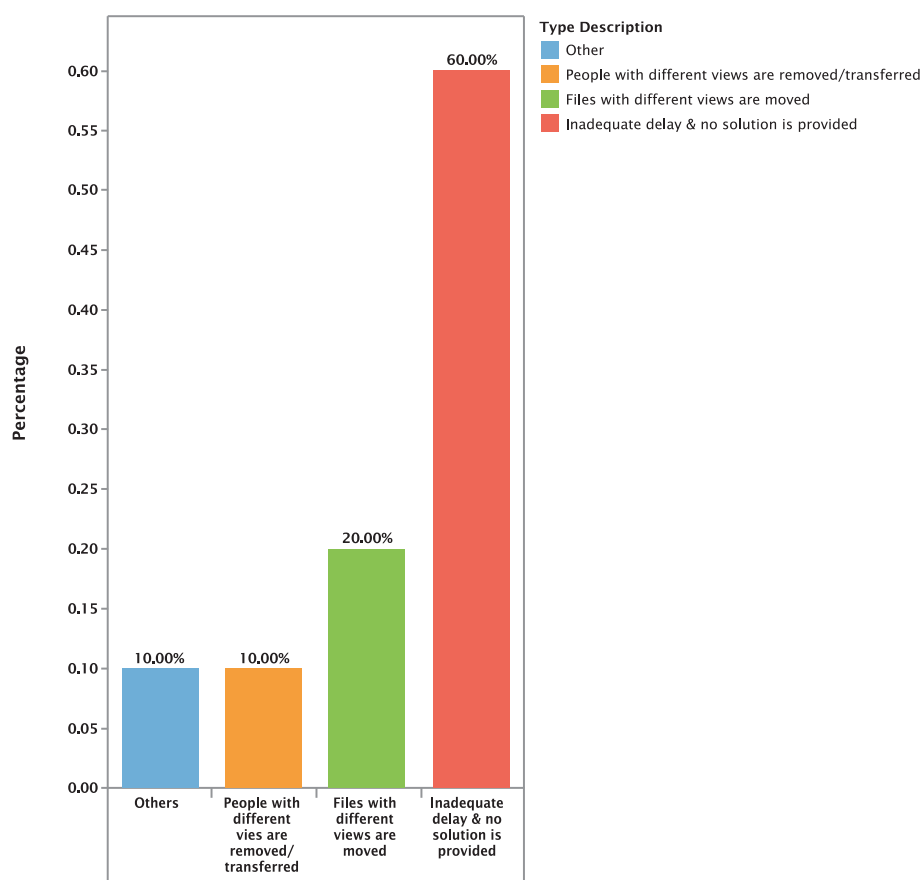
- “Files with different views are moved” and “there is an indefinite delay and no solution is provided,” options were selected by 23% of the respondents from the private sector. This shows that the solution or agreement between the evaluation members is not achieved which delays the project.
- Again, in the case of government survey, majority of the respondents (60%) highlighted that there is an indefinite delay and no solution is provided.

### Response from private sector:





### Response from government sector:



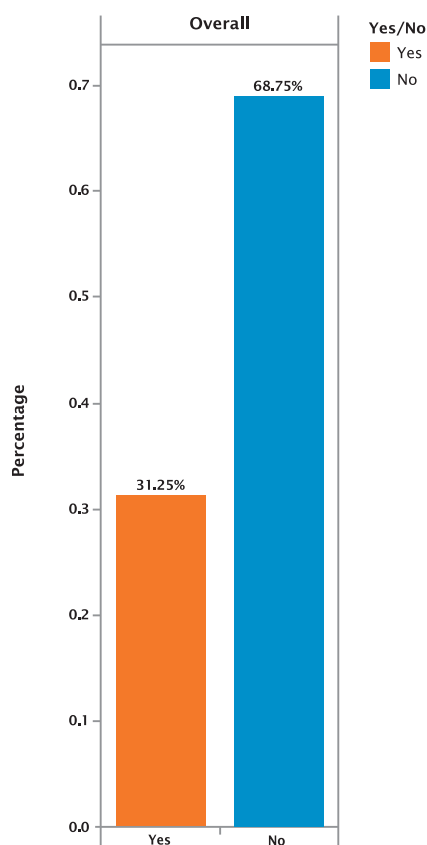
### 3. When an independent monitoring consultant reports non-compliance or incorrect capital costs, is action taken?

| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                         | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Yes</li> <li>• Please elaborate on the nature of the action</li> <li>• No</li> <li>• Vested interest of government project officials or politicians</li> <li>• Risk of legal action and arbitration, which delays project</li> <li>• Anticipated loss to PPP project for and risk to the government</li> <li>• Possibility of blame being laid on government department</li> <li>• Any other reason</li> </ul> | <ul style="list-style-type: none"> <li>• Yes</li> <li>• Please elaborate on the nature of the action</li> <li>• No</li> <li>• Risk of legal action and arbitration, which delays project</li> <li>• Anticipated loss to PPP project for and risk to the government</li> <li>• Possibility of blame being laid on government department</li> <li>• Vested interest of government project officials or politicians</li> <li>• Any other reason</li> </ul> |



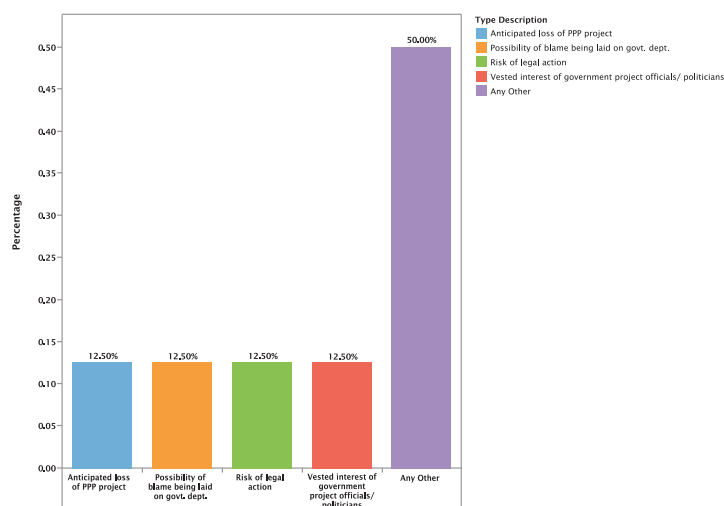
## Analysis:

- Majority of the respondents (>68%) said no action is taken. Majority of these respondents feel that it is due to “vested interest of government project officials or politicians”. It is interesting to note that there is no difference of opinion between private and government survey responses, as majority of government respondents (80%) shared that no action is taken on reports from monitoring consultants.



- Following are some of the reasons cited by respondents from the private sector for ‘no action taken’:

## Responses from private sector:





### 5.1.3. Responses from the survey analysis on suggested ways to strengthen ethical practices under PPPs.

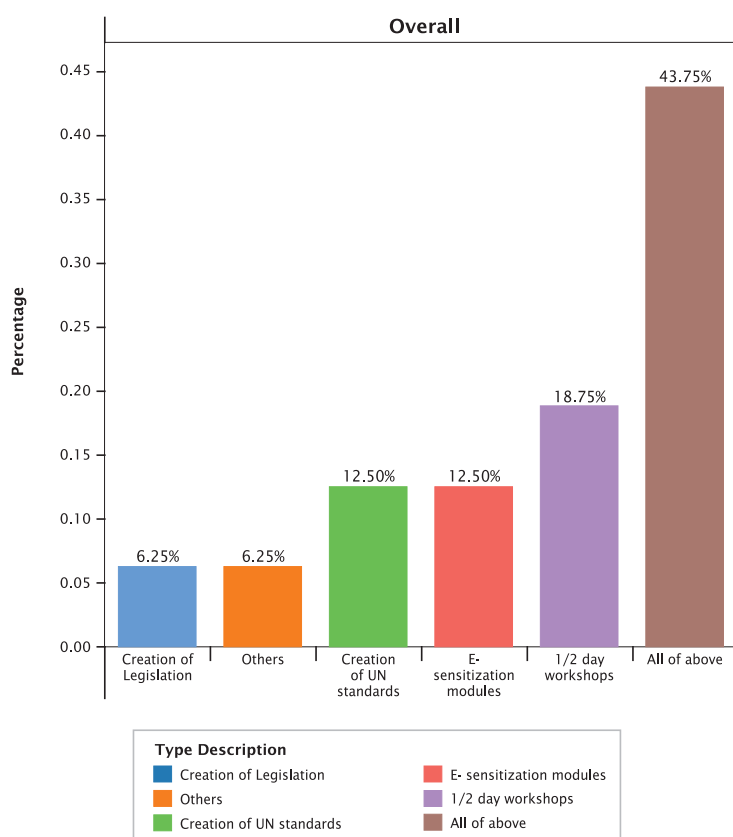
#### 1. What would be the best way to build greater ethical practices and behaviour under PPPs?

| Private company survey options:                                                                                                                                                                                                                                                         | Government survey options:                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Awareness and training through:<br/>E- sensitization modules<br/>1/2 day workshops</li> <li>Creation of a UN standard that all companies must work towards</li> <li>Creation of legislation</li> <li>All of the above</li> <li>Others</li> </ul> | <ul style="list-style-type: none"> <li>Awareness and training through:<br/>E- sensitization modules<br/>1/2 day workshops</li> <li>Creation of a UN standard that all companies must work towards</li> <li>Creation of legislation</li> <li>All of the above</li> <li>Others</li> </ul> |

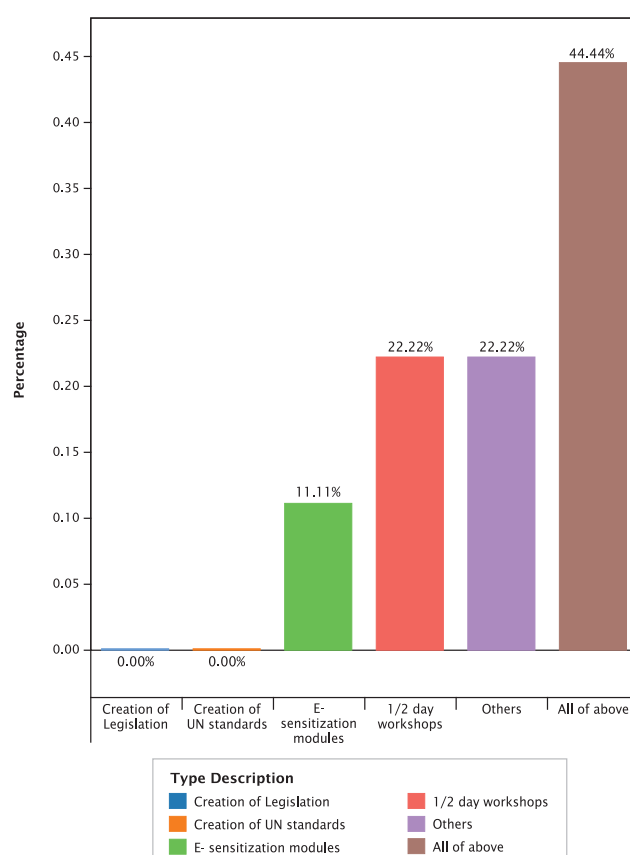
#### Analysis:

- Creation of new legislation was cited as the least preferred option (by only 6% of the respondents from both the sectors).

#### Responses from the private sector:

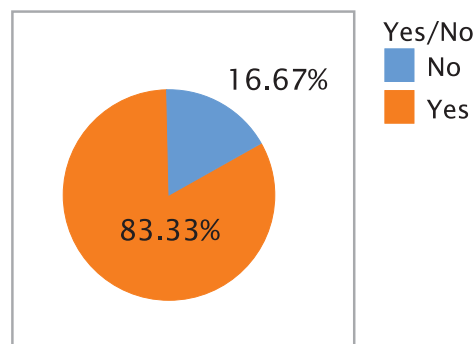


#### Responses from government officials:





**2. Based on your experience, is there a need for awareness on anti-corruption among government officials involved in PPP's?**



**Analysis:**

- Majority of the respondents from government sector highlighted that there is a need for anti-corruption awareness among the government officials involved in PPP.

**3. In which areas should the training programs focus?**

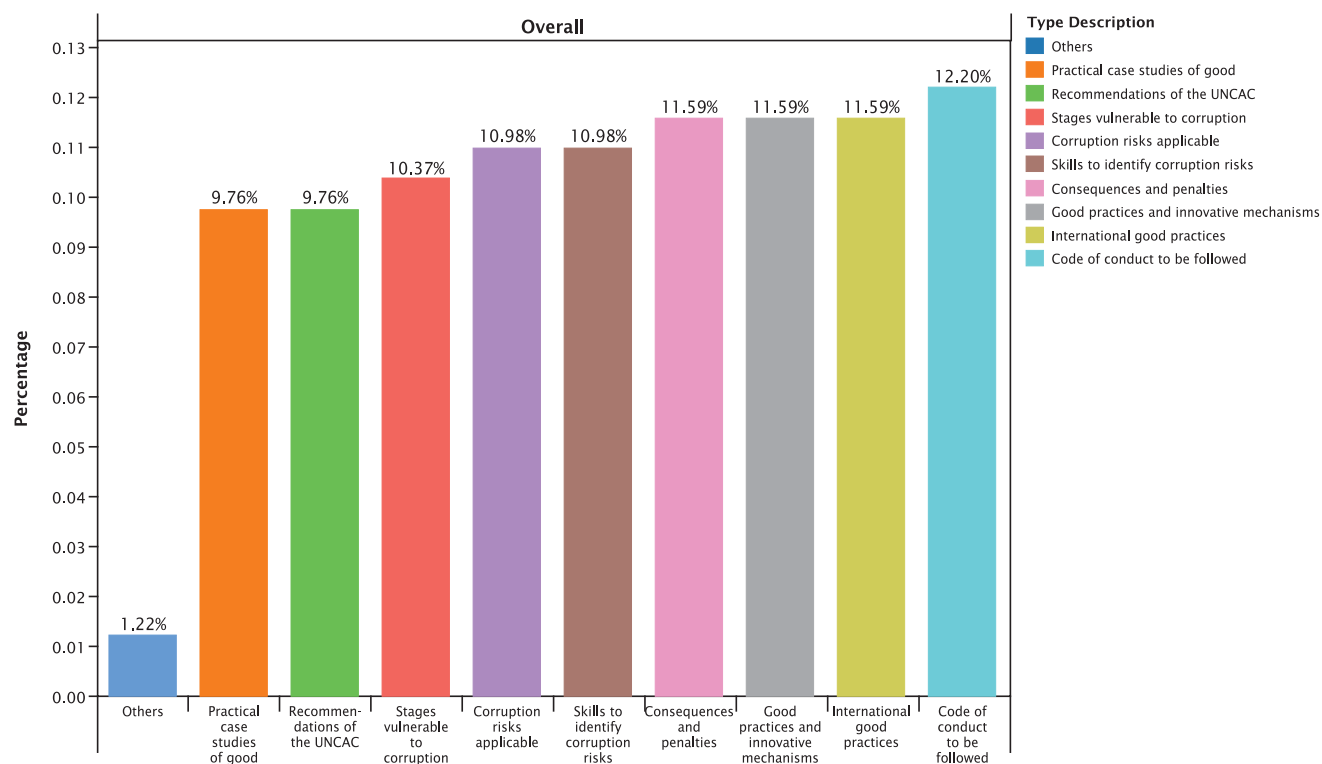
| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Practical case studies of good practices against corruption (India and sector specific).</li> <li>Code of conduct (conflict of interest, etc.) to be followed during procurement (leading practices).</li> <li>International good practices and examples to address corruption in PPP projects and procurement from other countries.</li> <li>Consequences and penalties of violating laws.</li> <li>Recommendations of the UNCAC and other international instruments.</li> <li>Stages vulnerable to corruption.</li> <li>Good practices and innovative mechanisms that some companies are following.</li> <li>Skills to identify corruption risks and respond effectively to them.</li> <li>Corruption risks applicable at different PPP stages.</li> <li>Others</li> </ul> | <ul style="list-style-type: none"> <li>Practical case studies of good practices against corruption (India and sector specific).</li> <li>International good practices and examples to address corruption in PPP projects and procurement from other countries.</li> <li>Consequences and penalties of violating laws.</li> <li>Recommendations of the UNCAC and other international instruments.</li> <li>Stages vulnerable to corruption.</li> <li>Good practices and innovative mechanisms that some companies are following.</li> <li>Skills to identify corruption risks and respond effectively to them.</li> <li>Corruption risks applicable at different PPP stages.</li> <li>Others</li> </ul> |

**Analysis:**

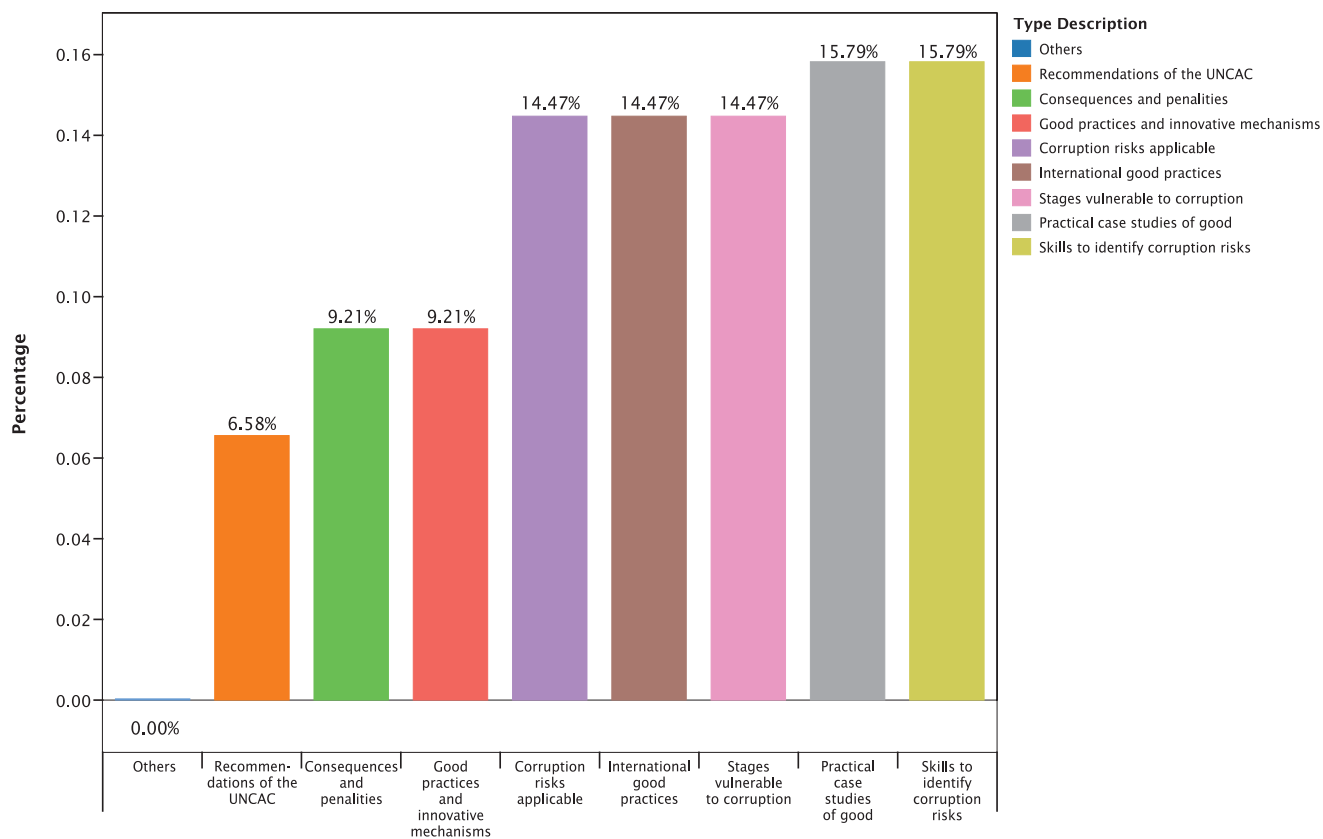
- A need to cover all the areas and training options emerged, as common response from a majority of respondents from both the sectors.
- The respondents from the private sector are looking for an ethical code of conduct that can be followed, leading international or good practices and legal information to address corruption.
- However, majority of the respondents in government survey wanted skills to identify corruption risks applicable at different stages of PPP.



## Responses from private sector:



## Responses from government sector:





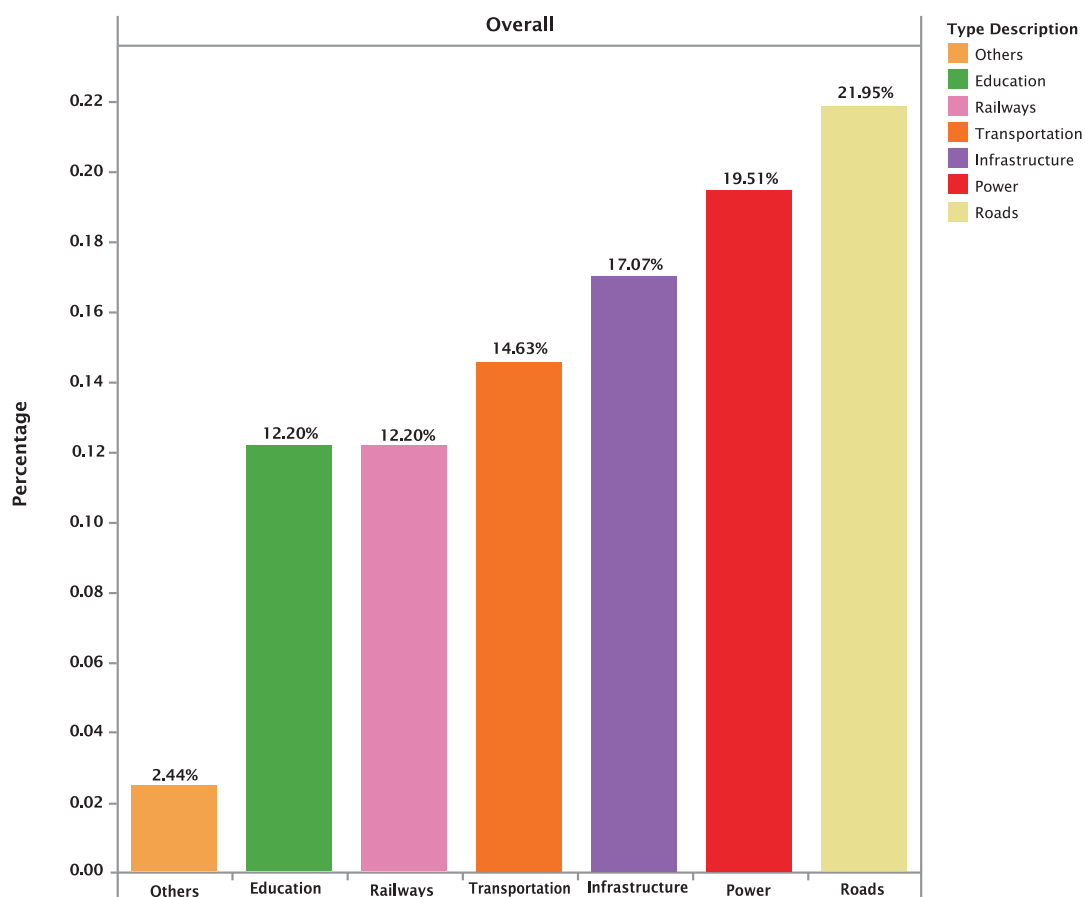
#### 4. Which sectors require more sensitization on anti-corruption measures in procurement under PPPs?

| Private company survey options:                                                                                                                                                          | Government survey options:                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Road</li> <li>• Power</li> <li>• Transportation</li> <li>• Education</li> <li>• Railways</li> <li>• Infrastructure</li> <li>• Others</li> </ul> | <ul style="list-style-type: none"> <li>• Road</li> <li>• Power</li> <li>• Shipping</li> <li>• Education</li> <li>• Railways</li> <li>• Others</li> </ul> |

#### Analysis:

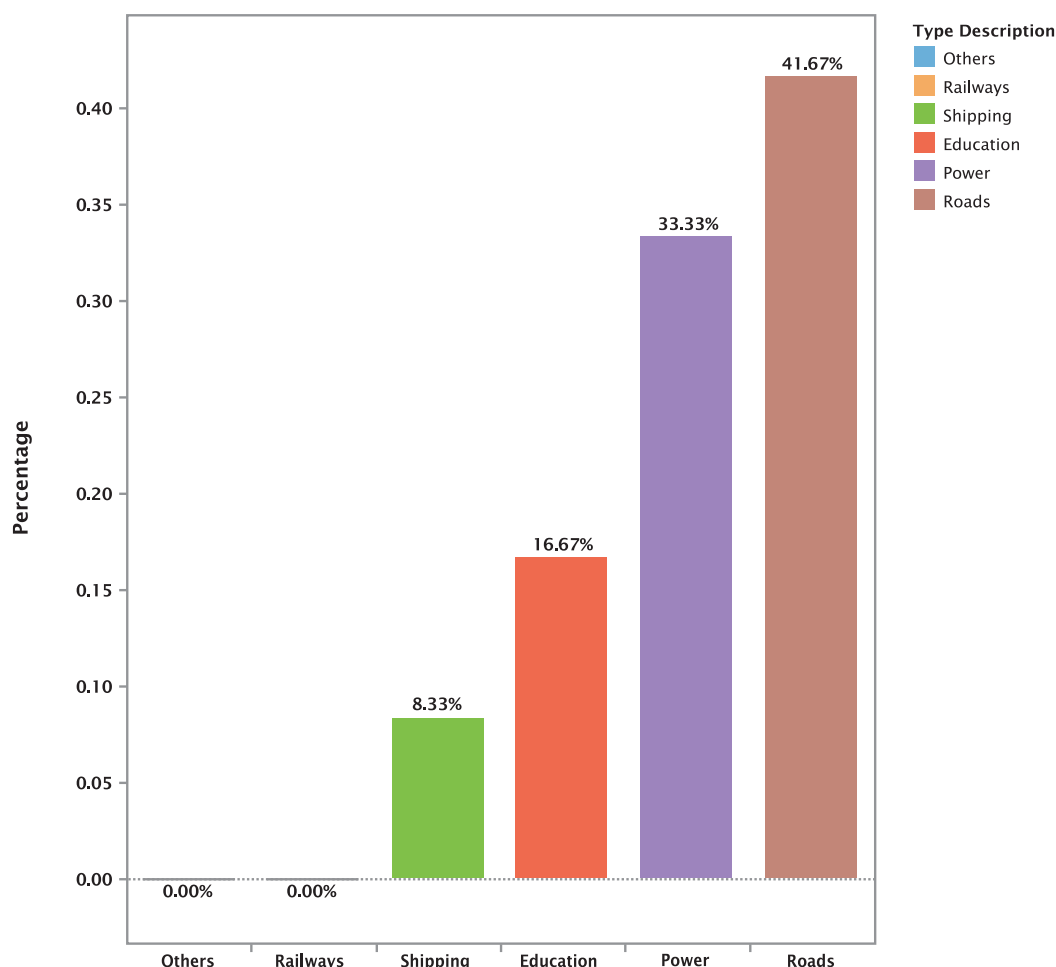
- 'Roads sector' was identified by maximum number of respondents (22%). It relates well with the amount of PPP related activity in the sector.
- Response from government survey was not much different. Majority of the respondents believed 'Road sector' requires more sensitization as compared to other sectors.

#### Responses from private sector:





### Responses from government sector:



### 5. Are you aware of the following guidelines in PPP?

| Private company survey options:                                                                                                                                                                                                                                                          | Government survey options:                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Government policy for PPP's and sector wise policy paper</li> <li>Yes/No</li> <li>United Nations Convention on Corruption</li> <li>Yes/No</li> <li>UNCITRAL model law</li> <li>Yes/No</li> <li>Public Procurement Bill</li> <li>Yes/No</li> </ul> | <ul style="list-style-type: none"> <li>Government policy for PPP's and sector wise policy paper</li> <li>Yes/No</li> <li>United Nations Convention on Corruption</li> <li>Yes/No</li> <li>UNCITRAL model law</li> <li>Yes/No</li> <li>Public Procurement Bill</li> <li>Yes/No</li> </ul> |

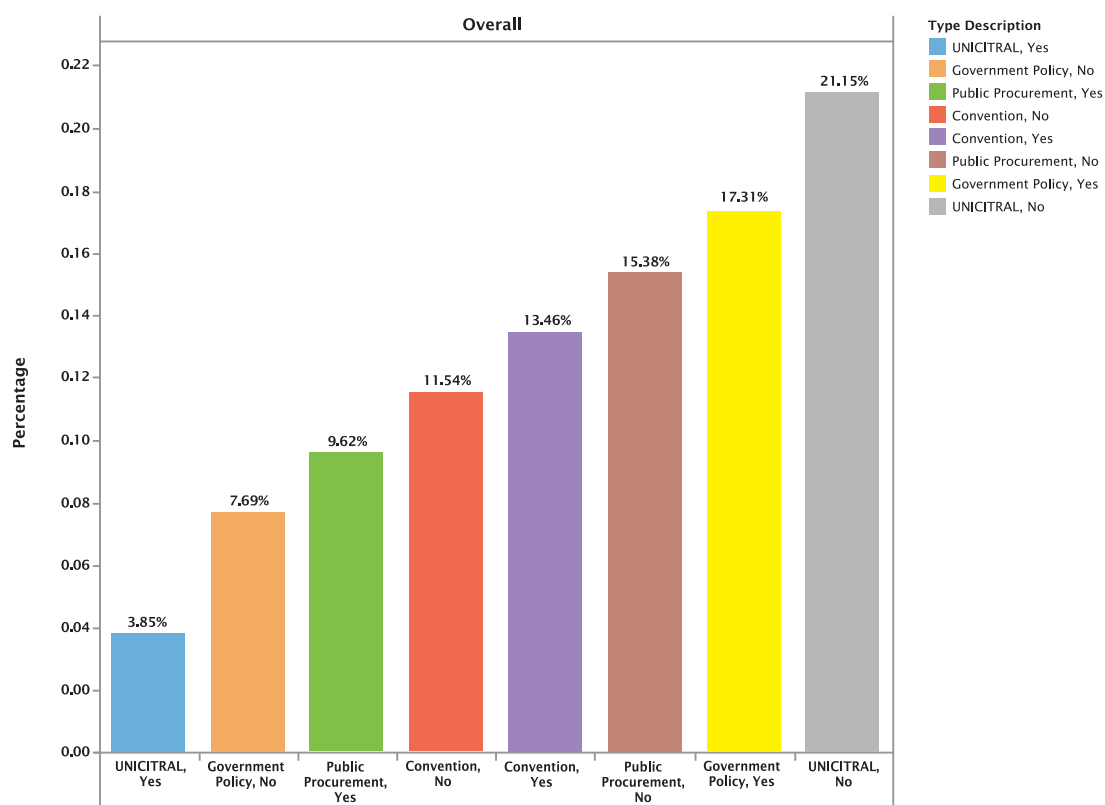
### Analysis:

- Majority of the respondents from the private sector had expressed their lack of knowledge of UNCITRAL and Public Procurement Bill. However, government PPP policy is known to the majority of respondents.
- Responses from government survey were no different where few respondents had heard of UNCITRAL model law and also majority (67%) was not aware of the public procurement

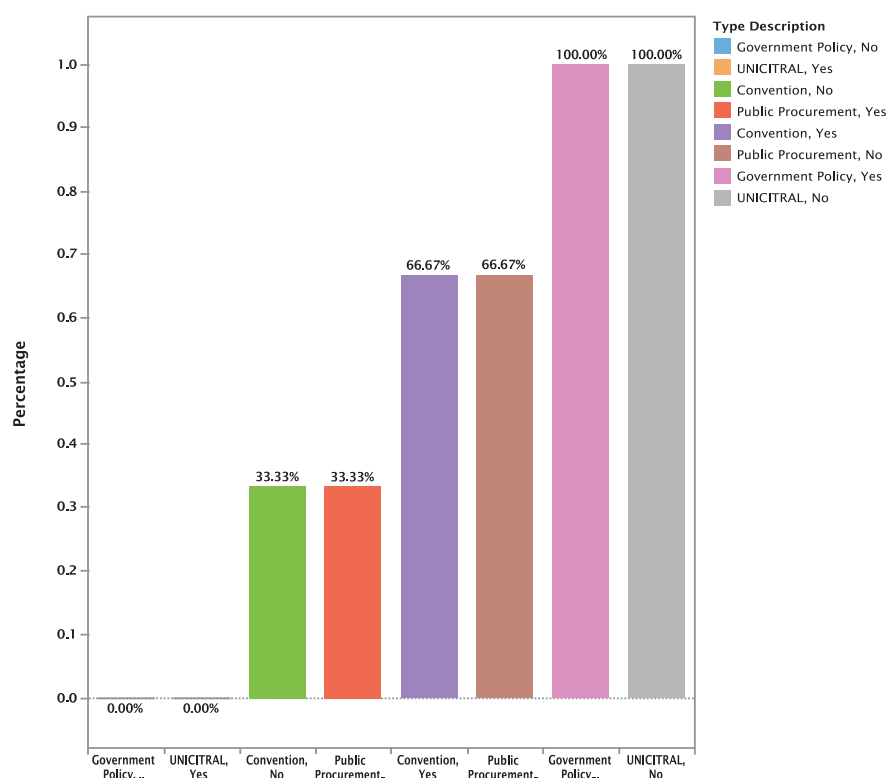


bill pending for enactment. This might be one of the reasons that respondents (14%) wanted to learn about international good practices to address corruption.

### Private sector responses:



### Government sector responses:





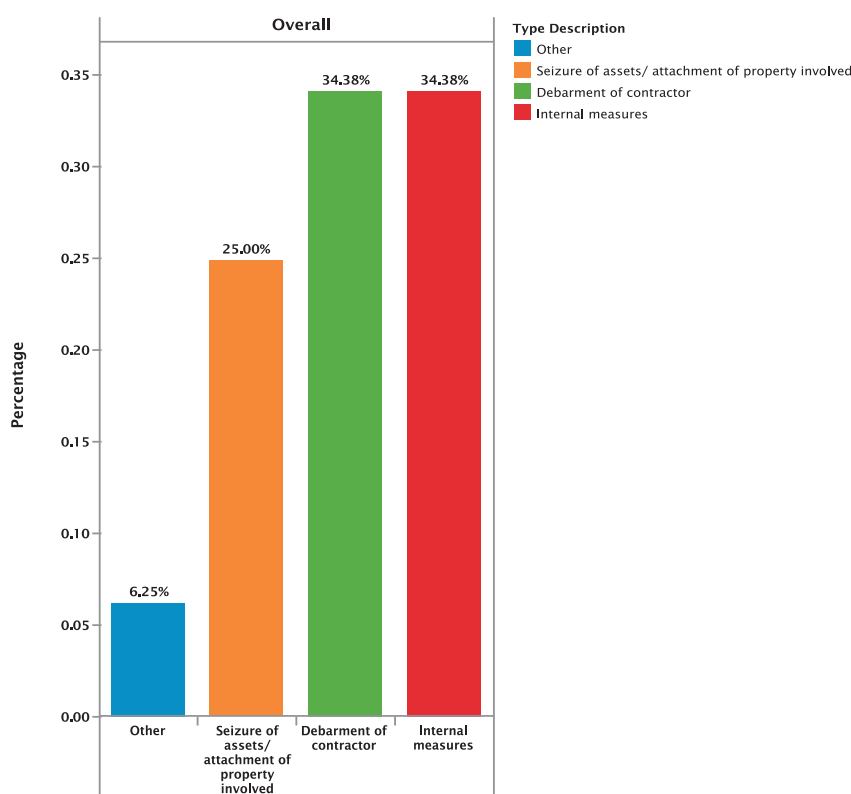
6. Given that subversion of systemic rules tends to be a recurring pattern amongst procurement officials as well as contractors, there is a need for stringent measures against the same. Based on this, which option/s, in your experience, would be the best deterrents to such negative behaviour?

| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Debarment of contractors for proven non-compliance with procurement processes or corrupt conduct</li> <li>• Internal measures (including debarment from involvement in procurement process) against procurement officials, who may be the originators of the corrupt behaviour</li> <li>• Seizure of assets/ attachment of property involved in transactions that subvert mandated procurement processes</li> <li>• Other penal/corrective/fiduciary measures.</li> </ul> | <ul style="list-style-type: none"> <li>• Debarment of contractors for proven non-compliance with procurement processes or corrupt conduct</li> <li>• Internal measures (including debarment from involvement in procurement process) against procurement officials, who may be the originators of the corrupt behaviour</li> <li>• Seizure of assets/ attachment of property involved in transactions that subvert mandated procurement processes</li> <li>• Other penal/corrective/fiduciary measures.</li> </ul> |

### Analysis:

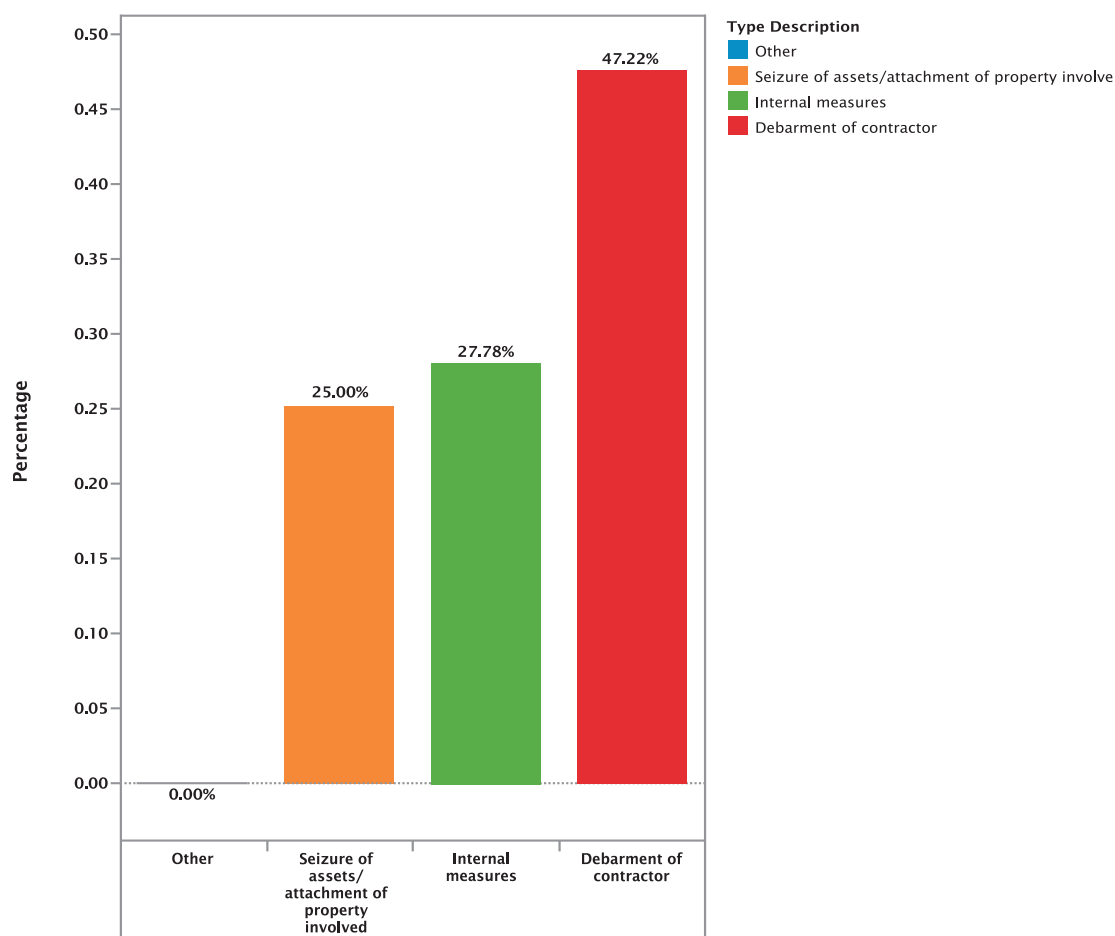
- Majority of the respondents from private sector were in the favour of ‘Debarment of contractors’ and “Internal measures against procurement officials” (34% each).
- Majority of respondents from the government sector (47%) believe that the contractors should be debarred, followed by respondents (28%) who wanted internal measures against procurement officials involved in corrupt practices.

### Responses from private sector:





### Responses from government officials:



7. The use of technology and the internet can facilitate better and faster dissemination of key information to promote transparency. With this understanding, please highlight solutions that would help achieve this aim.

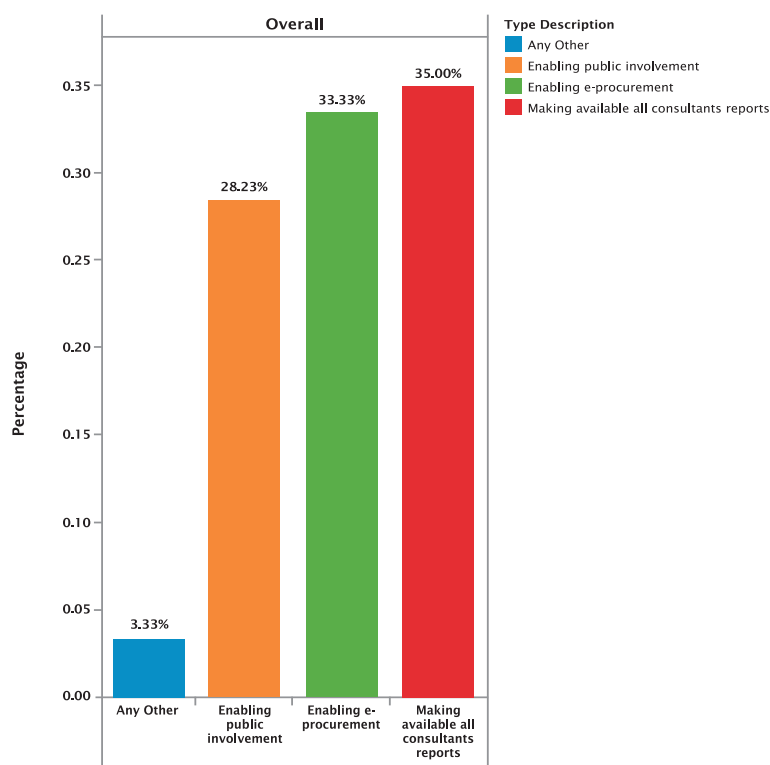
| Private company survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Government survey options:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>Enabling e-procurement across sectors</li><li>Making available all consultant/ transaction advisors' reports online at a specific portal that consolidates all information relating to PPP projects.</li><li>Enabling public involvement, public hearings and public scrutiny of documents related to the PPP project through online portals that are then incorporated into the decision-making process of the final project</li><li>Any other examples/ good practices related to the use of e-procurement that you may have encountered.</li></ul> | <ul style="list-style-type: none"><li>Enabling e-procurement across sectors</li><li>Making available all consultant/ transaction advisors' reports online at a specific portal that consolidates all information relating to PPP projects.</li><li>Enabling public involvement, public hearings and public scrutiny of documents related to the PPP project through online portals that are then incorporated into the decision-making process of the final project</li><li>Any other examples/ good practices related to the use of e-procurement that you may have encountered.</li></ul> |



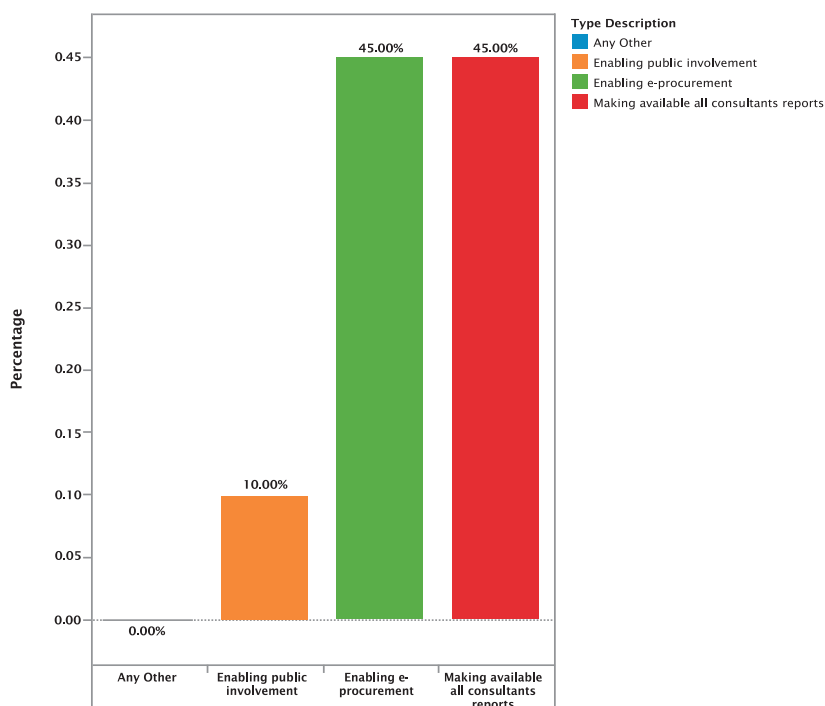
## Analysis:

- The responses were mixed and reflect the fact that transparency and publishing reports online can increase transparency.
- In the case of government survey, only 10% of the respondents favoured public involvement or public scrutiny of documents. However, majority of the respondents (45%) shared that enabling e-procurement would help promote transparency.

### Private sector responses:



### Government sector responses:





## 6. Summary of Recommendations

Following a detailed assessment on the extent of compliance between Indian legislation and the UNCAC, grass root challenges at the practice levels, the following are some recommendations that this report presents:

### 1. **Enactment of the Public Procurement Bill 2012, followed by issuing and notifying the PPP Rules in their current form:**

The Public Procurement Bill 2012, which contains Draft Rules for PPPs and the national draft policy on Public Private Partnerships are compliant to the UNCAC requirements. Enactment of the Public Procurement Bill 2012 followed by issuing and notifying the PPP Rules in its current form will help to provide a strong legislative and policy framework. As seen from responses to the survey, officials from both the government and private sector mentioned the need to have a strong set of rules and procedures that govern procurement and PPP. The enactment of the bill shall help to bridge this gap. The bill was tabled in May 2012 and passed in the lower house of the Parliament i.e. Lok Sabha. As of April 2013, it awaits passing in the upper house i.e. Rajya Sabha. This report also acknowledges the mechanisms created for public participation and for receiving feedback on the development of the PPP bill through the website [www.pppinindia.com](http://www.pppinindia.com). The procedure for seeking feedback from citizens to make the process more robust stands out as a distinct good practice. With this strong legislative and policy framework in place, India will be well placed to follow internationally agreed principles of procurement and also effectively address vulnerabilities to corruption in procurement processes.

A related recommendation is to encourage adoption of a similar legislation at state level. Some states of focus should be states like Kerala that had developed a Public Procurement Bill policy many years ago and Andhra Pradesh where a legislation is approved and awaited as well as states where PPP expenditure is high: Haryana, Gujarat, Karnataka, Maharashtra, Orissa and Delhi<sup>10</sup>. Secondly a focus on those states where there is currently no legislation or policy needs to be given e.g. Maharashtra, Uttar Pradesh, Sikkim, Gujrat, Madhya Pradesh.

### 2. **Defining the private sector entity and its officials providing services and goods under PPPs as Public officials:**

The UNCAC defines a 'Public official' as:

- Any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority.
- Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

<sup>10</sup>[www.pppindiadatabase.com](http://www.pppindiadatabase.com)



- Any other person defined as a 'public official', in the domestic law of a State Party.
- In addition, for the purpose of some specific measures contained in article II of the UNCAC, 'public official' may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

The Draft National PPP Policy defines 'public purpose' as one where the benefit of the state-owned asset or the state responsibility of provision of service is intended for the public-at-large. The facilities/services being provided ought to be traditionally provided by the government as a sovereign function, to the people.

Therefore, it is recommended that the private sector entity and its officials operating under a PPP be included in the definition of 'public officials' as they are deemed to provide a public function, service and also act on behalf of the government in a specific area i.e. provide facilities/services that ought to be traditionally provided by the government. This inclusion of private sector entities operating under the PPP as public officials would allow for greater accountability, transparency and also obligations to be fulfilled under the Right to Information Act 2005 and the other legislations applicable to public officials like the Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010, Rights of citizens for time bound delivery of goods and services and redressal of their grievance bill 2011.

Judicial interpretation of the term 'public purpose', as contained in the Land Acquisition Act, 1894 may also have an influence over its definition in the context of PPPs. The Land Acquisition, Rehabilitation and Resettlement Bill of 2011 (Tabled before the Lok Sabha) classifies the acquisition of land under a Public Private Partnership for the provision of public goods or services as a 'public purpose'. It is therefore possible that even though no definition of 'public purpose' exists in the Public Procurement Bill 2012, definitions in other laws and judicial interpretation could bring about an acceptable level of precision in its definition, as applicable to PPPs.

In making this recommendation, this report does acknowledge that the Public Procurement Bill 2012 does contain probity measures to regulate private entities as well. Clause 6 mandates a Code of Integrity for both the procuring entity and the bidders. That said, the code prohibits both the officials of a procuring entity as well as the private sector bidders from not only bribe giving and bribe taking but also from "Non-disclosure of conflict of interest" and "obstruction of any investigation or audit of a procurement process". The sanctions for violation for the private sector bidder include exclusion from the procurement process, forfeitures, recoveries, cancellation of contract, debarment from participation in future procurement for a period of up to two years etc. Moreover, for other breaches of the Act, Clause 44 on 'Punishment for taking gratification or valuable thing in respect of public procurement' levies sanctions equally on private suppliers and public officials, thereby addressing both the supply and the demand side of corruption.



While, these clauses exist, the recommendation being made is a broader inclusion of the private sector in the definition of public officials and thereby greater accountability. The inclusion of private sector entities will also include obligations under other articles of the UNCAC article 7-Public Sector and article 8- Code of conduct.

### 3. Training and awareness:

Training and awareness on legislation, rules and procedures is an important aspect in strengthening implementation of legislation mentioned under article 9 of the UNCAC.

In light of this, we would like to mention several good practices in India in the context of PPP procurement.

- The Government of India has a dedicated website for PPP projects ([www.pppinindia.com](http://www.pppinindia.com)) that provides both a national and a state view of projects in various life cycle stages.
- Dedicated PPP toolkit that is available for use by procuring entities.-
- Repository for PPP: A very detailed and extensive articulation of processes that constitute PPP procurement.

While it has been provided for under the PPP legislation, this component needs to be strengthened and sustained. The survey results brought out the fact that most procurement practitioners had not received training. Respondents mentioned their requirement for training and awareness as a mechanism to prevent and understand the stages vulnerable to corruption. Awareness and training on probity related issues in procurement must also be included in curriculum for technical colleges and institutes. Another important aspect that emerged was the lack of motivation and a closed mind set to adopt new changes. With the introduction of the new PP bill, it therefore becomes imperative to counter some of these challenges with a strong sensitization and awareness strategy. The previous sections indicate the different areas that the training and awareness should focus on. However some of the important areas with regards to training needs are:

- Training and awareness on what corruption is and what corrupt acts entails. This would also assist to bring a sensitization and not cast an allegation of corruption on every procurement decision that goes wrong so as to recognize, value and protect the business interests of a PPP.
- Training is required for both private sector and government sector officials. This would bring about greater understanding of the workings of the private and government sectors. The private sector officials mentioned vulnerability during the procurement stage managed by the procuring entity i.e the government. Government officials on the other hand mentioned fear of corruption during the project management cycle which was largely in the hands of the private sector.
- While training should be mandatory for all levels involved in the procurement, it is important for officials in important stages of a procurement process to have additional and regularly repeated training. For example, lack of skills to detect corruption by external consultants points towards the need for training. Secondly officials to whom grievance applications are sent for review or officials of the procurement redressal committee that shall be set up at the centre and in a few geographical regions require training.



- As seen from the survey results and discussions of the Working Group, some of the recurring subjects on which training is required are: stages vulnerable to corruption; leading practices to prevent and detect corruption; and grievance redressal mechanisms. Officials from the private sector mentioned that they often do not know what to do or to whom to seek appeal in case of a grievance.
- The Draft Rules for PPP provide rules for project management i.e. Rule 96 to 104. Awareness and training programmes must focus on the need to address vulnerabilities both in the procurement and project management cycle.

#### **4. Need for regulation of personnel issues:**

As seen from the detailed analysis in Table 1, the need to regulate personnel issues requires strengthening. Audits and evaluation mechanisms must include risk assessments and greater selection procedure for certain posts or offices such as those involved in procurement. Management should also introduce and support procedures for employees in positions that are especially vulnerable to corruption. There needs to be a system of multiple-level reviews and approvals for certain matters rather than having a single individual with sole authority over decision-making. Rotation of staff involved in the procurement process is also crucial. Clarity into consultant liabilities needs to be established in the context of PPP projects, given the need to hold them accountable for project outcomes. Lastly, there is a greater need for priority to be given for asset declaration requirements of all officials involved in procurement.

- An example worth mentioning here: Ministry of Roads, Transport and Highways periodically rotate evaluation committee members and employ independent review and monitoring agency. Ministry of Rural Development shared that peer teams are formed to review procurement and evaluations performed under the PPP project.

#### **5. Strengthening the system of appeal and grievance redressal:**

Clause 40 to Clause 42 of the bill contains provisions for a three tier grievance redressal mechanism. The Draft Rules for PPPs contain similar grievance redressal mechanisms. While these mechanisms address grievances between bidders and procuring entities, mechanisms must be present to address through formal channels grievances that arise between officials of the same organizations on procurement decisions. As seen from the survey, officials from the private and government sector mentioned challenges whilst addressing differences of opinion on certain procurement decisions which may be taken at a compromise to ethical practices.

Secondly, in view of the arbitration proceedings incorporated in the present Public Procurement Bill 2012, it is suggested that regulators be empowered to a certain extent, in the context of dispute resolution mechanisms.

The liability of both the procurement official and the procuring entity must be established as separate for offences and similarly for the officials in the bidding entity and the bidding organization.



- There is a need for a strong whistleblower law and equally for witnesses and victims to enhance the existing protection and grievance redressal mechanisms. However, this subject is outside the purview of this report.

#### **6. Clauses related to closure of debarment period of contractors and entities with convictions of corruption and malpractices in procurement, especially in PPP scenarios:**

Clause 49- This clause contains provisions relating to debarment of bidders. It provides for debarment by the central government if a bidder is convicted of an offence (i) under the Prevention of Corruption Act; or (ii) under the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract. It also provides that a bidder debarred by the Central Government shall not be eligible to participate in a procurement process of any procuring entity for a period of three years commencing from the date of debarment. It also specifies the circumstances in which a bidder may be debarred by a procuring entity for a period not exceeding two years.

Another clause that needs to be included along with a time stipulation such as this is the necessity for defaulting bidders to show evidence of establishing an integrity mechanism in place before they are allowed to bid again.

#### **7. Strengthening monitoring mechanism- Implementation of a fraud risk register as a potential warning or fraud indicator system:**

Such a system would prompt a closer inspection of a particular area of the public procurement process vulnerable to consumption or a debarment register covering companies and personnel involved in non-compliant or corrupt conduct.

Risk indicator at the outset of every project and procurement processes is also identified as a monitoring mechanism.

The national policy on PPPs must also provide procurement guidelines to be taken up during emergency situations. Some of the most glaring deviations in procurement happen during the emergency situations wherein procurement is governed by very few rules and exceptions are the norm. This vulnerability has also been outlined by the UNCAC. Open tendering, regarded as a transparent procurement technique should be used as a general rule.

#### **8. Need for involvement of citizens:**

It would be useful to build a mechanism for public participation, providing information regarding contract management in the public domain, ensuring access to records for stakeholders and civil society and the public for a reasonable number of years after the contract award, organizing regular review meetings between the customer and contractor, and recording end-user satisfaction with the service provider.

Another viewpoint was that it was an idealistic concept that was not only difficult to put into practice, but would also slow down and delay the process of selection. It was also felt that



the prospect of interminable delays through such measures for transparency would scare away potential partners from entering into PPP arrangements. Thirdly, merely placing facts in the public domain and expecting people to understand and form informed opinions on the nuances of these decisions would be misguided optimism.

On the other hand, others pointed out that there were several grey areas in the currently applicable framework for PPPs, resulting in too much of discretion with government officials to take decisions regarding whether PPPs were required in the first place, what the conditions for the partnership might be, and whether these are to be modified during the course of the execution of the PPP contract. There have also been indications of communities themselves being involved in corruption.

Doubtless, there is a strong case for public scrutiny of PPPs. Constitution of a committee of public experts would bring in its wake, questions on their legitimacy to represent the interests of the public at large. The ideal approach would be to have a public panel that is above suspicions of bias, which is able to appreciate the nuances of decisions in an atmosphere that is not charged with emotional pro or anti PPP leanings.

Therefore one of the methods to accomplish the same is through a “**Public jury**”. This is a new idea in India which has been tried in the State of Goa. A moderating influence would be required in such decision making; whoever is judging would keep in mind that this is a business plan as well as a social need. Citizens would need to play an informed and effective role without delaying the initiation of a project and without questioning it unreasonably. Social media can play an important role in increasing awareness and transparency in such matters.

Another promising approach would be to select ‘**Citizen Panelists**’, who are a representative random sample of the affected stakeholders. The Citizens Panel so constituted would be given the opportunity to hear from pro and con advocates and neutral witnesses on various aspects of the PPP, with intensive facilitation from the government. Following this, Panelists could come out with a Citizens’ Advisory Statement, which lists out the majority and minority views and the rationale behind them. This would become a public document as also used by the government to take decisions on further steps.

These represent the main findings and recommendations formulated thus far through the joint activities of the public private Partnership for Probitry in public procurement project.

#### **9. E-procurement is an important measure to enhance transparency in a procurement process but must not be mistaken for the only one:**

E-procurement is a means to enhance transparency but should not be mistaken as the only means to enhance transparency.

ICT tools including e-procurement do help in greater availability of information, equal access to information, data tracking, reducing human interventions, measuring compliance with policy and procedures. However, they also may create challenges in large procurement and bid documents like in the case with infrastructure projects, there are dangers of manipulations, hacking etc. While use of ICT tools must be encouraged, it is only a tool and not a solution which does not fully resolve the challenge and need for ethical and competitive behaviour.



## Annexures

- Annexure 1:* List of legislation and policies reviewed.
- Annexure 2:* Sample for base line survey on grassroot challenges, current practices and training needs
- Annexure 3:* Copy of questionnaire – private sector
- Annexure 4:* Copy of questionnaire – government sector
- Annexure 5:* List of Working Group participants – New Delhi & Bangalore.
- Annexure 6:* Bibliography





## **Annexure 1:**

### **List of legislation and policies reviewed –**

- Accounting Standards notified by Ministry of Corporate Affairs
- Annual Financial Acts
- Code of Criminal Procedure (1973)
- Companies Act 1956
- Companies Bill 2012
- Competition Act, 2002
- Constitution of India
- Criminal Law Amendment Ordinance, 1944
- Delegation of Financial Powers Rules, 1978
- Draft National Policy for Public-Private Partnership
- Draft Rules for Public Private Procurement 2011
- Foreign Trade Policy
- General Financial Rules, 2005
- Govt. of India Resolution on Public Interest Disclosures & Protection of Informer
- Income Tax Act, 1961
- Indian Penal Code (1860)
- Indian Penal Code (Amendments) Bill 2011
- Industrial Licensing Policy
- Prevention of Corruption Act, 1988
- Prevention of Money Laundering Act, 2002
- Public Procurement Bill, 2012
- Securities Contracts (Regulation) Act, 1956
- Securities Contracts (Regulation) Act, 1956
- The Benami Transaction (Prohibition) Act, 1988
- The Benami Transactions (Prohibition) Bill, 2011



- The Central Civil Services (Pension) Rules 1971
- The Industries (Development and Regulation) Act, 1951
- The Karnataka Transparency in Public Procurement Act, 1999
- The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011
- The Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010
- The Railways Services (Pension) Rules, 1993

### List of entities selected to understand how legislation and policies are put into “practice”

| PPP Project                                   | Sector    | Nodal Agency | Department                                                       |
|-----------------------------------------------|-----------|--------------|------------------------------------------------------------------|
| GandhidhamPalanpur Railway Project            | Railways  | Centre       | Ministry of Railways                                             |
| JNPT 3rd Container Terminal Project           | Ports     | Centre       | Jawaharlal Nehru Port Trust                                      |
| HosurKrishnagiri National Highway             | Roads     | Centre       | National Highways Authority of India                             |
| 24*7 Urban Water Supply                       | Urban Dev | Karnataka    | Karnataka Urban Infrastructure Development & Finance Corporation |
| Four Laning of Bangalore Maddur State Highway |           |              |                                                                  |
| SH-17                                         | Roads     | Karnataka    | Karnataka Road Development Corporation Limited (KRDCL)           |
| Luxury Tourist Train                          | Tourism   | Karnataka    | Karnataka State Tourism Development Corporation Ltd (KSTDC)      |
| Sanitary Landfills in Bangalore               | Urban Dev | Karnataka    | Bangalore Mahanagara Palike , Karnataka                          |



## Annexure 2:

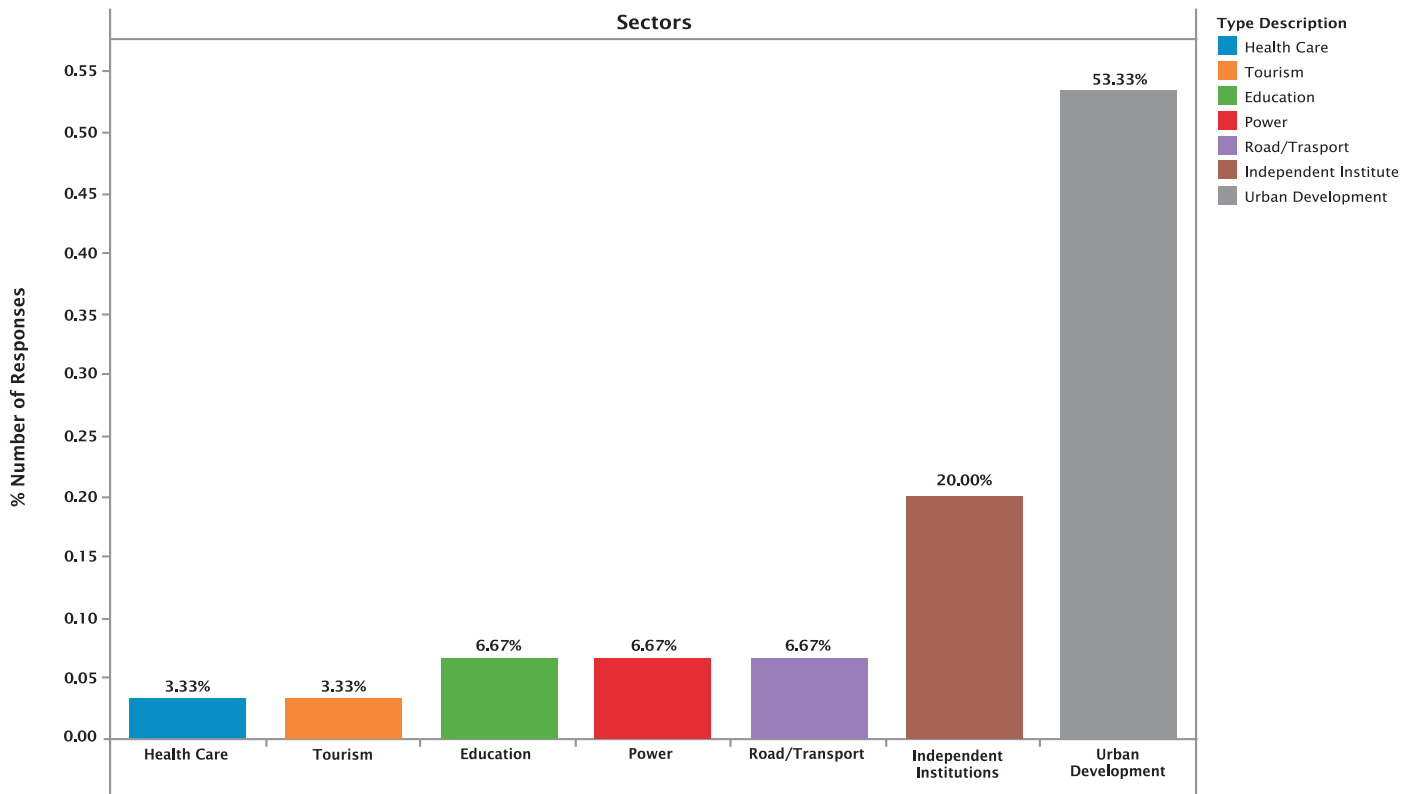
Sample for base line survey on grassroot challenges, current practices and training needs:

| Sample Selected                 |                                           |                                                                       |
|---------------------------------|-------------------------------------------|-----------------------------------------------------------------------|
| Sectors selected for survey:    | Ministries selected for survey            | State agencies selected for survey                                    |
| 1. Roads / Transport / Highways | 1. Ministry of Road Transport & Highways  | <b>Haryana:</b>                                                       |
| 2. Urban Development            | 2. Ministry of Civil Aviation             | • Town & Country Planning Department                                  |
| 3. Ports                        | 3. Ministry of Power                      | • Haryana Urban Development Authority                                 |
| 4. Power                        | 4. Ministry of Shipping                   | • Public Works Department                                             |
| 5. Tourism                      | 5. Ministry of Railways                   | <b>Gujarat:</b>                                                       |
| 6. Education                    | 6. Ministry of Human Resource Development | • Gujarat Urban Development Corporation                               |
| 7. Health Care                  | 7. Ministry of Urban Development          | • Gujarat Maritime Board                                              |
| 8. Railways                     | 8. Ministry of Finance                    | • Gujarat UrjaVikas Nigam Limited                                     |
| 9. Civil Aviation               | 9. Ministry of Rural Development          | <b>Karnataka:</b>                                                     |
|                                 |                                           | • Karnataka Public Works, Ports and Inland Water Transport Department |
|                                 |                                           | • Transport Department                                                |
|                                 |                                           | • Education Department                                                |
|                                 |                                           | <b>Maharashtra:</b>                                                   |
|                                 |                                           | • Maharashtra Airport Development Company Limited                     |
|                                 |                                           | • Department of Power                                                 |
|                                 |                                           | • Public Works Department                                             |
|                                 |                                           | <b>Orissa:</b>                                                        |
|                                 |                                           | • Industry Department,                                                |
|                                 |                                           | • Odisha Industrial Infrastructure Development Corporation            |
|                                 |                                           | • Tourism Department                                                  |
|                                 |                                           | <b>Delhi:</b>                                                         |
|                                 |                                           | • Department of Delhi Jal Board                                       |
|                                 |                                           | • New Delhi Municipal Council                                         |



The respondents represented a wide range of industries, regions, and departments, which are represented below:

### Respondents profile for the Public Private Partnership (PPP) survey:





## Annexure 3:

### Questionnaire used for the survey with officials from private sector

India ratified the United Nations Convention against Corruption (UNCAC) in May 2012 joining approximately 161 countries that have ratified this convention. The United Nations Convention against Corruption is the only legally binding international instrument against corruption providing a road map for governments, private sector and civil society. Hence by ratification, there is an obligation on governments, private sector, civil society and society at large to respond and address corruption at different levels.

The UNCAC provides a number of standards and suggestions to address and prevent corruption in procurement. The United Nations Office on Drugs and Crime is the lead UN agency mandated to assist countries across the world to implement the UNCAC. In India UNODC, in coordination with the Government of India and regulatory bodies, has initiated a project to strengthen Probity under public private partnerships in Procurement'' under which a national survey is being rolled out across the country from June to December 2012. The Government of India has also

**Public Private Partnership (PPP)** – Private Partnership is an arrangement between a **public (government)** entity & a **private (non-government)** entity by which services that have traditionally been delivered by the public entity are provided by the private entity under a set of terms and conditions that are defined at the outset.

**In light of the above facts objectives of the survey are:**

- Develop an understanding of the factors that may serve as corruption risks in procurement and relations between public and private sector.
- Discover and determine how an individuals and organizations can be empowered to take the right decision.
- Understanding good practices and challenges being faced by organizations to address corruption in PPP's.

Your feedback is extremely valuable to understand the challenges and perspectives to addressing corruption under Public Private Partnerships in procurement. The findings of the survey will contribute to the development of a model toolkit on incentives for sensitization and awareness. We request you to kindly take the time to contribute to this important discussion which will take no more than 20-25 minutes. Your responses will be entirely confidential. Nothing you say will be attributed either to you or to your organization. We would like to emphasize that we are not looking for any information that may be considered either financially or commercially sensitive.



## SURVEY:

### Understanding the respondent's background and needs

|                                                      |  |
|------------------------------------------------------|--|
| Name ( <i>optional</i> )                             |  |
| Designation                                          |  |
| Ministry/ Department                                 |  |
| Company name ( <i>applicable to private sector</i> ) |  |
| City                                                 |  |
| Would you like your responses to be confidential     |  |

1. What do you understand by a Public Private Partnership project?  


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---
2. We understand that experience and training are the key strengths that would facilitate a positive Public Private Partnership (PPP) experience for all stakeholders. Have you been trained in procurement?
  - Yes

If yes, how many years ago did you participate in this training?

  - 0 –5 years back
  - 6–10 years back
  - More than 10 years back
  - No
3. Several PPP projects have been initiated over the years in India. Have you ever been part of the PPP process in past?
  - Yes
  - At which stage of the PPP were you involved?
    1. Planning phase (identification, conceptualization and scoping)
    2. Pre-qualification / bidding phase (procurement of the concessioner)
    3. Execution phase (contract execution and construction)
    4. Operation/Maintenance phase (monitoring)
  - No, I was not involved in PPP in the past.



4. **All:** For how many years have you been involved with PPP projects either directly or as an oversight manager?
  1. Less than two years
  2. More than two but less than five years
  3. More than five years
  4. No Experience
5. As per your knowledge and understanding which are some of the PPP projects that were successfully implemented. Also, what were the factors leading to the success of the project (i.e. Criteria of success a project promoted competition, transparency, and fair in selection, transparency after bid selection and during implementation of the project)?

|                |
|----------------|
| Project Names: |
| Reasons:       |

6. As per your knowledge and understanding what are the stages that may be vulnerable to corruption? (Kindly grade in terms of maximum vulnerability)
  1. PPP project selection
  2. Project bidding
  3. Bid evaluation stage
  4. Project execution stage
  5. Monitoring stage
  6. Procurement under a PPP arrangement
7. In what form could corruption take place under a PPP? (Kindly grade in terms of maximum vulnerability)
  1. Bribery
  2. Abuse of function
  3. Embezzlement of property/assets
  4. Selection of pre-determined bidder
  5. Corruption during subsequent procurement that takes place i.e. during project execution.
  6. False and incorrect financial statements to misrepresent actual revenue.
  7. Senior management of company has colluded
  8. Others \_\_\_\_\_



8. What are the possible reasons of this corruption? (Kindly grade in terms of maximum vulnerability)
  1. Weak monitoring procedures
  2. Lack of transparency in bid screening procedure
  3. Lack of rules and guidelines
  4. No penal provisions
  5. No one can question the motives of senior management
  6. Others, please specify\_\_\_\_\_
9. What are the consequences of corruption to a PPP project or business organization (Kindly grade in terms of maximum vulnerability)
10.
  1. Contract awarded to non-eligible companies
  2. Optimal benefit is not provided to users
  3. Financial loss to government
  4. Poor quality of service or no service to users
  5. Delay in delivery of services
  6. Reputation loss to the stakeholders (private company, govt., country)
  7. Financial loss to the private company
  8. Morale of private companies come down
11. Based on your experience, on which areas would you like us to focus during the sensitization program?

|                                                                                                                       | E = Essential, D = Desirable, N = Not Necessary |
|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Practical case studies of good practices against corruption (India and sector specific).                              |                                                 |
| Code of conduct (conflict of interest, etc.) to be followed during procurement (leading practices).                   |                                                 |
| International good practices and examples to address corruption in PPP projects and procurement from other countries. |                                                 |
| Consequences and penalties of violating laws.                                                                         |                                                 |
| Recommendations of the UNCAC and other international instruments.                                                     |                                                 |
| Stages vulnerable to corruption.                                                                                      |                                                 |
| Good practices and innovative mechanisms that some companies are following.                                           |                                                 |
| Skills to identify corruption risks and respond effectively to them.                                                  |                                                 |
| Corruption risks applicable at different PPP stages.                                                                  |                                                 |
| Others (please specify).                                                                                              |                                                 |



12. Is there a need for greater awareness on the above or is there adequate consciousness already? What would be the best way to create sensitization and capacity on the above mentioned areas:
1. E- sensitization modules
  2. 1/2 day workshops
  3. Creation of a UN standard that all companies must work towards
  4. Creation of legislation
  5. All of the above
  6. Others, please specify \_\_\_\_\_
13. Which sectors require

### Questions related to pre-bid stage

14. **All:** Competition is critical to ensure the success of the PPP process. Based on your knowledge and understanding, what are the factors that may result in competition being limited?
1. Prequalification criteria are defined in a way to suit one or a few favoured companies.
  2. There is an undocumented pressure on or reference to the evaluation team to select a favoured company.
  3. The tender advertisement is restricted to one or a few companies.
  4. Qualified bidders are not available.
  5. Coercive practices are followed by bidders, who exert pressure on not bidding.
  6. Confidential (commercial, technical, etc.) is shared with the favoured company. Therefore, lack of information discourages others from participating in the tender.
  7. Companies are not given an equal opportunity to get clarifications on the response document.
  8. Inadequate time is given to companies to respond to a tender.
  9. Any other reason? Please elaborate\_\_\_\_\_



### Questions related to the bidding stage

15. It has been noted that very few unsuccessful bidders lodge a formal complaint against the tender process (procurement). Based on your experience, why is an unsuccessful bidder hesitant to lodge a complaint or question the procurement process?
1. They are satisfied that the process was free and fair.
  2. The non-refundable fee for complaints is too high.
  3. The company is afraid of losing future business.
  4. The company lacks knowledge about the complaint process.
  5. The complaint-redressal process of the government department lacks credibility.
  6. Complaints are not entertained properly by the concerned government department.
  7. Others, please specify \_\_\_\_\_
16. **Government:** The members of the procurement team may differ on the results of the evaluation or on the selection of a private company. Based on your understanding, how are such differences managed and taken forward?
1. People with different views are removed from the bid evaluation process.
  2. Such people are transferred to another department or location.
  3. Files with different views are moved.
  4. There is an indefinite delay and no solution is provided.
  5. Any other resolution? Please elaborate \_\_\_\_\_

### Questions related to the execution stage

17. **All:** Concessioner agreements form the heart and soul of a PPP project. These agreements set the boundaries and expectations for all stakeholders in the project. It is therefore critical to ensure that these agreements do not have deficiencies or are not lax on the operational efficiency parameters of the concessioner. Based on your knowledge, how are relaxed operational efficiency parameters approved and documented in an agreement?
1. Parameters based on unrealistic numbers or return on investment arguments
  2. Excessively high cost of construction or “cost padding”
  3. Non-competitive methods of selection
  4. Pressure from senior members of the government
  5. Pressure to urgently initiate project
  6. Cartelization of private companies
  7. Weak evaluation process



8. Lack of experience and knowledge of government department while drafting contract agreement (or lack of model concessioner agreement)
9. Documented performance parameters not measureable or reliable
10. Any other methodology? Please elaborate \_\_\_\_\_

### Questions related to monitoring stage

18. **All:** The government has decided to work with independent external consultants to check leakages and monitor integrity during execution or monitoring of PPP projects. There have been instances of integrity violations during the execution stage. Based on your experience, what are the key reasons for independent external consultants not being able to detect such integrity issues at the execution or monitoring stage?
  1. Restricted or limited scope of work of independent external consultants
  2. Consultants not independent of concessioner
  3. Limited skills of consultants' employees in detection of fraud or corruption- related issues
  4. Non-cooperation of concessioner with consultants
  5. Consultants reporting indicators of fraud or corruption, these not being followed up by the government department
  6. Concessioners taking advantage of the weakness in a signed concessioner agreement (contract)
  7. Any other reason. Please elaborate \_\_\_\_\_
19. **All:** When an independent monitoring consultant reports non-compliance or incorrect capital costs, is action taken?
  - Yes.
    1. Vested interest of government project officials or politicians
    2. Risk of legal action and arbitration, which delays project
    3. Anticipated loss to PPP project for and risk to the government
    4. Possibility of blame being laid on government department
    5. Any other reason? Please elaborate \_\_\_\_\_
  - Please elaborate on the nature of the action taken \_\_\_\_\_
  - No



## Questions on understanding sound practices

20. **All:** PPP is evolving in different sectors. Therefore, there is adequate scope for improvement in the way PPP process is conducted. It has been noted that it is sometimes difficult to introduce new practices in the procurement process. Based on your knowledge, what are the reasons that block innovation?
1. Procurement committee members are comfortable working with old practices and avoid change.
  2. There is no evidence to suggest that the new practice will make the tender process successful.
  3. New practices are not part of procurement manuals or guidelines.
  4. Taking ownership of introducing new practices is difficult.
  5. New practices do not feature in the memos or circulars in a department.
  6. There are no problems in introducing new practices.
  7. Any other reason? Please elaborate\_\_\_\_\_
21. Do you have some innovative practices to check or avoid corruption that your organization follows when getting in to a PPP?
1. Yes
  2. No
- If Yes, Would you like to share some of these practices: \_\_\_\_\_  
\_\_\_\_\_?
22. As a private sector organization what are some of the concerns that you might have when entering in to a PPP with regard to corruption? (Kindly grade in terms of maximum vulnerability)
1. Prequalification criteria suits one or a few favoured companies.
  2. Evaluation parameters involving subjective criteria that are open to interpretation
  3. Evaluation parameters suiting favoured company
  4. Restricting sharing of policy, commercial or technical information with a favoured company
  5. Actual evaluation performed by unskilled personnel or those with lack of experience
  6. Others (please specify)\_\_\_\_\_
23. Are you aware of the following guidelines on Public Private procurement-

|    |                                                          |         |
|----|----------------------------------------------------------|---------|
| 1. | Government policy for PPP's and sector wise policy paper | Yes/ No |
| 2. | United Nations Convention on Corruption                  | Yes/ No |
| 3. | UNICITRAL model law                                      | Yes/ No |
| 4. | Public Procurement Bill                                  | Yes/ No |



24. **All:** Given that subversion of systemic rules tends to be a recurring pattern amongst procurement officials as well as contractors, there is a need for stringent measures against the same. Based on this, which option/s, in your experience, would be the best deterrents to such negative behaviour?
1. Debarment of contractors for proven non- compliance with procurement processes or corrupt conduct
  2. Internal measures (including debarment from involvement in procurement process) against procurement officials, who may be the originators of the corrupt behaviour
  3. Seizure of assets/ attachment of property involved in transactions that subvert mandated procurement processes
  4. Other penal/corrective/fiduciary measures. Please elaborate.\_\_\_\_\_
25. **All:** The use of technology and the Internet can facilitate better and faster dissemination of key information to promote transparency. With this understanding, please highlight solutions that in your experience would help achieve this aim.
1. Enabling e-procurement across sectors
  2. Making available all consultant/ transaction advisors' reports online at a specific portal that consolidates all information relating to PPP projects.
  3. Enabling public involvement, public hearings and public scrutiny of documents related to the PPP project through online portals that are then incorporated into the decision-making process of the final project
  4. Any other examples/ good practices related to the use of e-procurement that you may have encountered. Please elaborate.\_\_\_\_\_
26. **All:** Based on your knowledge and understanding we would request you to please share practices to make PPP process more fair and transparent.

|  |
|--|
|  |
|--|



## Annexure 4:

### Questionnaire used for the survey with officials from government sector

India ratified the United Nations Convention against Corruption (UNCAC) in May 2012 joining approximately 160 countries that have ratified this convention. The United Nations Convention against Corruption is the only legally binding international instrument against corruption providing a road map for governments, private sector and civil society. Hence by ratification, there is an obligation on governments, private sector, civil society and society at large to respond and address corruption at different levels.

The UNCAC provides a number of standards and suggestions to address and prevent corruption in procurement. The United Nations Office on Drugs and Crime is the lead UN agency mandated to assist countries across the world to implement the UNCAC. In India UNODC, in coordination with the Government of India and regulatory bodies, has initiated a project to strengthen Probity under public private partnerships in Procurement” under which a national survey is being rolled out across the country from June to December 2012.

**Public Private Partnership (PPP)** – Private Partnership is an arrangement between a public (government) entity & a private (non-government) entity by which services that have traditionally been delivered by the public entity are provided by the private entity under a set of terms and conditions that are defined at the outset.

**In light of the above facts objectives of the survey are:**

- Develop an understanding of the factors that may serve as corruption risks in procurement and relations between public and private sector.
- Discover and determine how an individual can be empowered to take the right decision.
- Understanding good initiatives and practices on corporate integrity that companies are already following.

Your feedback is extremely valuable to understand the challenges and perspectives to addressing corruption under public private partnerships in procurement. The findings of the survey will contribute to the development of a model toolkit on incentives for sensitization and awareness. We request you to kindly take the time to contribute to this important discussion which will take no more than 20–25 minutes. Your responses will be **entirely confidential**. Nothing you say will be attributed either to you or to your organization. **We would like to emphasize that we are not looking for any information that may be considered either financially or commercially sensitive.**



## SURVEY:

### Understanding the respondent's background and needs

|                                                      |  |
|------------------------------------------------------|--|
| Name ( <i>optional</i> )                             |  |
| Designation                                          |  |
| Ministry/ Department                                 |  |
| Company name ( <i>applicable to private sector</i> ) |  |
| City                                                 |  |
| Would you like your responses to be confidential     |  |

27. What do you understand by a Public Private Partnership project?

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28. We understand that experience and training are the key strengths that would facilitate a positive Public Private Partnership (PPP) experience for all stakeholders. Have you been trained in procurement?

- Yes

If yes, how many years ago did you participate in this training?

- 0 –5 years back
- 6–10 years back
- More than 10 years back
- No

29. Several PPP projects have been initiated over the years in India. Have you ever been part of the PPP process in past?

- Yes
  - At which stage of the PPP were you involved?
    5. Planning phase (identification, conceptualization and scoping)
    6. Pre-qualification / bidding phase (procurement of the concessioner)
    7. Execution phase (contract execution and construction)
    8. Operation/Maintenance phase (monitoring)
- No, I was not involved in PPP in the past.



30. **All:** For how many years have you been involved with PPP projects either directly or as an oversight manager?
- 5. Less than two years
  - 6. More than two but less than five years
  - 7. More than five years
  - 8. No Experience
31. As per your knowledge and understanding which are some of the PPP projects which were successfully implemented. Also, what were the factors leading to the success of the project (i.e. Criteria of success a project promoted competition, transparency, and fair in selection, transparency after bid selection and during implementation of the project)?

|                |
|----------------|
| Project Names: |
| Reasons:       |

32. As per your knowledge and understanding what are the stages that may be vulnerable to corruption? (Kindly grade in terms of maximum vulnerability)
- 7. PPP project selection
  - 8. Project bidding
  - 9. Bid evaluation stage
  - 10. Project execution stage
  - 11. Monitoring stage
  - 12. Procurement under a PPP arrangement
33. In what form could corruption take place under a PPP? (Kindly grade in terms of maximum vulnerability)
- 9. Bribery
  - 10. Abuse of function
  - 11. Embezzlement of property/assets
  - 12. Selection of pre-determined bidder
  - 13. Corruption during subsequent procurement that takes place i.e. during project execution.
  - 14. False and incorrect financial statements to misrepresent actual revenue.
  - 15. Senior management of company has colluded
  - 16. Others \_\_\_\_\_



34. What are the possible reasons of this corruption? (Kindly grade in terms of maximum vulnerability)
- 7. Weak monitoring procedures
  - 8. Lack of transparency in bid screening procedure
  - 9. Lack of rules and guidelines
  - 10.No penal provisions
  - 11.No one can question the motives of senior management
  - 12.Others, please specify\_\_\_\_\_
35. What are the consequences of corruption to a PPP project or business organization (Kindly grade in terms of maximum vulnerability)
- 9. Contract awarded to non-eligible companies
  - 10.Optimal benefit is not provided to users
  - 11.Financial loss to government
  - 12.Poor quality of service or no service to users
  - 13.Delay in delivery of services
  - 14.Reputation loss to the stakeholders (private company, govt, country)
  - 15.Financial loss to the private company
  - 16.Morale of private companies come down
36. Based on your experience, on which areas would you like us to focus during the sensitization program?

|                                                                                                                       | E = Essential, D = Desirable, N = Not Necessary |
|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Practical case studies of good practices against corruption (India and sector specific).                              |                                                 |
| Code of conduct (conflict of interest, etc.) to be followed during procurement (leading practices).                   |                                                 |
| International good practices and examples to address corruption in PPP projects and procurement from other countries. |                                                 |
| Consequences and penalties of violating laws.                                                                         |                                                 |
| Recommendations of the UNCAC and other international instruments.                                                     |                                                 |
| Stages vulnerable to corruption.                                                                                      |                                                 |
| Good practices and innovative mechanisms that some companies are following.                                           |                                                 |
| Skills to identify corruption risks and respond effectively to them.                                                  |                                                 |
| Corruption risks applicable at different PPP stages.                                                                  |                                                 |
| Others (please specify).                                                                                              |                                                 |



37. Is there a need for greater awareness on the above or is there adequate consciousness already? What would be the best way to create sensitization and capacity on the above mentioned areas:
7. E- sensitization modules
  8. 1/2 day workshops
  9. Creation of a UN standard that all companies must work towards
  10. Creation of legislation
  11. All of the above
  12. Others, please specify \_\_\_\_\_
38. Which sectors require

### **Questions related to pre-bid stage**

39. **All:** Competition is critical to ensure the success of the PPP process. Based on your knowledge and understanding, what are the factors that may result in competition being limited?
10. Prequalification criteria are defined in a way to suit one or a few favoured companies.
  11. There is an undocumented pressure on or reference to the evaluation team to select a favoured company.
  12. The tender advertisement is restricted to one or a few companies.
  13. Qualified bidders are not available.
  14. Coercive practices are followed by bidders, who exert pressure on not bidding.
  15. Confidential (commercial, technical, etc.) is shared with the favoured company. Therefore, lack of information discourages others from participating in the tender.
  16. Companies are not given an equal opportunity to get clarifications on the response document.
  17. Inadequate time is given to companies to respond to a tender.
  18. Any other reason? Please elaborate \_\_\_\_\_

### **Questions related to the bidding stage**

40. It has been noted that very few unsuccessful bidders lodge a formal complaint against the tender process (procurement). Based on your experience, why is an unsuccessful bidder hesitant to lodge a complaint or question the procurement process?
8. They are satisfied that the process was free and fair.
  9. The non-refundable fee for complaints is too high.



- 10. The company is afraid of losing future business.
- 11. The company lacks knowledge about the complaint process.
- 12. The complaint-redressal process of the government department lacks credibility.
- 13. Complaints are not entertained properly by the concerned government department.
- 14. Others, please specify \_\_\_\_\_

41. **Government:** The members of the procurement team may differ on the results of the evaluation or on the selection of a private company. Based on your understanding, how are such differences managed and taken forward?

- 6. People with different views are removed from the bid evaluation process.
- 7. Such people are transferred to another department or location.
- 8. Files with different views are moved.
- 9. There is an indefinite delay and no solution is provided.
- 10. Any other resolution? Please elaborate \_\_\_\_\_

### Questions related to the execution stage

42. **All:** Concessioner agreements form the heart and soul of a PPP project. These agreements set the boundaries and expectations for all stakeholders in the project. It is therefore critical to ensure that these agreements do not have deficiencies or are not lax on the operational efficiency parameters of the concessioner. Based on your knowledge, how are relaxed operational efficiency parameters approved and documented in an agreement?

- 11. Parameters based on unrealistic numbers or return on investment arguments
- 12. Excessively high cost of construction or “cost padding”
- 13. Non-competitive methods of selection
- 14. Pressure from senior members of the government
- 15. Pressure to urgently initiate project
- 16. Cartelization of private companies
- 17. Weak evaluation process
- 18. Lack of experience and knowledge of government department while drafting contract agreement (or lack of model concessioner agreement)
- 19. Documented performance parameters not measureable or reliable
- 20. Any other methodology? Please elaborate \_\_\_\_\_



### Questions related to monitoring stage

43. **All:** The government has decided to work with independent external consultants to check leakages and monitor integrity during execution or monitoring of PPP projects. There have been instances of integrity violations during the execution stage. Based on your experience, what are the key reasons for independent external consultants not being able to detect such integrity issues at the execution or monitoring stage?
8. Restricted or limited scope of work of independent external consultants
  9. Consultants not independent of concessioner
  10. Limited skills of consultants' employees in detection of fraud or corruption- related issues
  11. Non-cooperation of concessioner with consultants
  12. Consultants reporting indicators of fraud or corruption, these not being followed up by the government department
  13. Concessioners taking advantage of the weakness in a signed concessioner agreement (contract)
  14. Any other reason. Please elaborate\_\_\_\_\_
44. **All:** When an independent monitoring consultant reports non-compliance or incorrect capital costs, is action taken?
- Yes.
    - Please elaborate on the nature of the action taken \_\_\_\_\_
  - No
6. Vested interest of government project officials or politicians
  7. Risk of legal action and arbitration, which delays project
  8. Anticipated loss to PPP project for and risk to the government
  9. Possibility of blame being laid on government department
  10. Any other reason? Please elaborate\_\_\_\_\_



### Questions on understanding sound practices

45. **All:** PPP is evolving in different sectors. Therefore, there is adequate scope for improvement in the way PPP process is conducted. It has been noted that it is sometimes difficult to introduce new practices in the procurement process. Based on your knowledge, what are the reasons that block innovation?
- 8. Procurement committee members are comfortable working with old practices and avoid change.
  - 9. There is no evidence to suggest that the new practice will make the tender process successful.
  - 10. New practices are not part of procurement manuals or guidelines.
  - 11. Taking ownership of introducing new practices is difficult.
  - 12. New practices do not feature in the memos or circulars in a department.
  - 13. There are no problems in introducing new practices.
  - 14. Any other reason? Please elaborate\_\_\_\_\_
46. Do you have some innovative practices to check or avoid corruption that your organization follows when getting in to a PPP?
- 3. Yes
  - 4. No
- If Yes, Would you like to share some of these practices: \_\_\_\_\_  
\_\_\_\_\_?
47. As a private sector organization what are some of the concerns that you might have when entering in to a PPP with regard to corruption? (Kindly grade in terms of maximum vulnerability)
- 7. Prequalification criteria suits one or a few favoured companies.
  - 8. Evaluation parameters involving subjective criteria that are open to interpretation
  - 9. Evaluation parameters suiting favoured company
  - 10. Restricting sharing of policy, commercial or technical information with a favoured company
  - 11. Actual evaluation performed by unskilled personnel or those with lack of experience
  - 12. Others (please specify)\_\_\_\_\_



48. Are you aware of the following guidelines on Public Private procurement-

|    |                                                          |         |
|----|----------------------------------------------------------|---------|
| 1. | Government policy for PPP's and sector wise policy paper | Yes/ No |
| 2. | United Nations Convention on Corruption                  | Yes/ No |
| 3. | UNICITRAL model law                                      | Yes/ No |
| 4. | Public Procurement Bill                                  | Yes/ No |

49. **All:** Given that subversion of systemic rules tends to be a recurring pattern amongst procurement officials as well as contractors, there is a need for stringent measures against the same. Based on this, which option/s, in your experience, would be the best deterrents to such negative behaviour?

5. Debarment of contractors for proven non- compliance with procurement processes or corrupt conduct
6. Internal measures (including debarment from involvement in procurement process) against procurement officials, who may be the originators of the corrupt behaviour
7. Seizure of assets/ attachment of property involved in transactions that subvert mandated procurement processes
8. Other penal/corrective/fiduciary measures. Please elaborate. \_\_\_\_\_

50. **All:** The use of technology and the Internet can facilitate better and faster dissemination of key information to promote transparency. With this understanding, please highlight solutions that in your experience would help achieve this aim.

5. Enabling e-procurement across sectors
6. Making available all consultant/ transaction advisors' reports online at a specific portal that consolidates all information relating to PPP projects.
7. Enabling public involvement, public hearings and public scrutiny of documents related to the PPP project through online portals that are then incorporated into the decision-making process of the final project
8. Any other examples/ good practices related to the use of e-procurement that you may have encountered. Please elaborate. \_\_\_\_\_

51. **All:** Based on your knowledge and understanding we would request you to please share practices to make PPP process more fair and transparent.



## Annexure 5:

### List of working group participants:

#### Working group participants – New Delhi

Three meetings– 29 May– 27 June– 12 July 2012

*(The names of all officials mentioned below were collated from the registration forms. The omission of any official or agency from this list is totally unintentional and unintended. The list below indicates a comprehensive list even of members who attended only one meeting)*

|                                                                                                                                      |                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Mr. A. K. Aggrawal<br>General Manager Law<br>C/o Dr H.P Kumar<br>Chairman & Managing Director<br>New Delhi                           | Mr. A. K. Mirchandani<br>Chairman & Managing Director<br>PEC, LTD, New Delhi                                                     |
| Ms. Aishwarya Panicker<br>Research Associate<br>Accountability Initiative<br>Center For Policy Research<br>New Delhi                 | Mr. Alok Shrivastawa<br>General Manager<br>Hindustan Steelworks Construction<br>New Delhi                                        |
| Ms. Anshu Sinha<br>Deputy Secretary (AVD-I)<br>New Delhi                                                                             | Ms. Anukampa Gupta<br>173-A, Belvedere Park,<br>DLF Cyber city<br>Gurgaon                                                        |
| Mr. Anupam Kulshreshtha<br>Former Deputy CAG                                                                                         | Mr. Arpinder Singh<br>Partner & National Director<br>Fraud Investigation & Dispute Services<br>Ernst & Young Pvt. Ltd.<br>Mumbai |
| Aryamala Prasad<br>Consultant – Governance<br>World Bank, New Delhi                                                                  | Mr. Ashutosh Mishra<br>Deputy Integrity Pact<br>Transparency International India<br>New Delhi                                    |
| Ms. Ayumi Fujino<br>Representative & Director<br>Regional Office<br>United Nations Industrial Development<br>Organization, New Delhi | Ms. Bulbul Sen<br>Indian Revenue Service (Retd) , Consultant<br>Consumer Unity & Trust Society International<br>New Delhi        |
| Mr. CPS Reddy<br>Planning Commission<br>Yojna Bhawan, New Delhi                                                                      | Mr. David Rebello<br>CEO, Bharti Realty Ltd.<br>Gurgaon                                                                          |
| Mr. H. C. Awasthy<br>CBI Anti Corruption Branch<br>New Delhi                                                                         | Dr. H.P. Kumar<br>Chairman & Managing Director<br>National Small Industries Corporation LTD<br>New Delhi                         |



|                                                                                                                                     |                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Mr. Hardip Singh Kingra<br>Chairman & Managing Director<br>National Scheduled Castes Finance & Development Corporation<br>New Delhi | Mr. Hunar Brar<br>ICONGO, New Delhi                                                                               |
| Dr. Jaya Bhalla<br>National Institute of Financial Management<br>Faridabad                                                          | Mr. Jeroninio Almeida<br>Fo ICONGO, Gurgaon                                                                       |
| Dr. Lalit K Panwar<br>Chairman & Managing Director<br>Indian Tourism Development Corporation, LTD<br>New Delhi                      | Mr. Lalit Kohli<br>Managing Director<br>National SafaiKaramcharis Finance & Development Corporation.<br>New Delhi |
| Mr. Madhukar Sinha<br>Professor<br>Indian Institute of Foreign Trade, New Delhi                                                     | Mr. Maneesh Bhardwaj<br>Director, Formulation Sourcing<br>Ranbaxy Laboritries Ltd.<br>Gurgaon                     |
| Mr. Mathew<br>Director Operations<br>Aircraft Divisions,<br>Air Charter Services, Pvt. Ltd.                                         | Mr. Mukesh Arya<br>Managing Director & CEO<br>Red Flag Oversight Consultancy<br>Services Pvt Ltd.<br>Gurgaon      |
| Mr. Partha<br>Head of Govt Advocacy Function, WIPRO<br>Gurgaon                                                                      | Dr. Paven Singh<br>Chairman & Managing Director<br>PTC India, New Delhi                                           |
| Mr. Prashant Bhushan<br>Senior Advocate, Supreme Court<br>Anti-corruption activist                                                  | Mr. R Sri Kumar<br>Vigilance Commisisoner<br>Central Vigilance Commission<br>New Delhi                            |
| Mr. Rajan Kohli<br>Advisor<br>Federation of Indian Chambers of Commerce & Industry, New Delhi                                       | Mr. Rajiv Datt<br>Managing Director<br>Indian Railway Finance Corporation Ltd.<br>New Delhi                       |
| Mr. Ramnath Jha<br>Chairman<br>Transparency International India<br>New Delhi                                                        | Mr. S Sen<br>Principal Adviser<br>Confederation of Indian Industry, Gurgaon                                       |
| Mr. S. K. Roongta<br>Chairman<br>Steel Authority of India Ltd.<br>New Delhi                                                         | Dr. Santosh Kumar Agrawal<br>Vice President<br>Transparency International India<br>New Delhi                      |



|                                                                                              |                                                                                                                        |
|----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Mr. Saurabh Gupta<br>Manager, National Assurance<br>Ernst & Young Private Limited<br>Gurgaon | Mrs. Shikha Sharma<br>Branch Head<br>Coordinator to Chairman OMAXE<br>New Delhi                                        |
| Ms. Shweta Girohtra<br>C/o Mr. David Rebello<br>CEO, Bharti Realty Ltd.<br>Gurgaon           | Ms. Sonam Yanchen Rana<br>Director, INOC, UNOPS<br>New Delhi                                                           |
| Mr. Swarn Kant Dass<br>Director Vigilance<br>New Delhi                                       | Mr. T. N. Tiwari<br>Joint Secretary & Legal Advisor<br>Department of Legal Affairs<br>New Delhi                        |
| Mr. T. R. Raghunandan<br>Center For Policy Research<br>New Delhi                             | Mr. V. M. Rathnam<br>Deputy Secretary to the Government of India<br>Department of Personal & Training<br>New Delhi     |
| Sh. V. V. Mishra<br>General Manager<br>ONGC, New Delhi                                       | Mr. Vineet Mehta<br>Senior Manager<br>Fraud Investigation and Dispute Services<br>Ernst & Young Pvt. Ltd.<br>New Delhi |
| Ms. Yamini<br>Center For Policy Research<br>New Delhi                                        |                                                                                                                        |



## Working group participants – Bangalore

Three meetings- 27 May- 29 June- 18 July 2012

*(The names of all officials mentioned below were collated from the registration forms. The omission of any official or agency from this list is totally unintentional and unintended. The list below indicates a comprehensive list even of members who attended only one meeting)*

|                                                                                                                                          |                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Dr. A Ravindra<br>Advisor to Chief Minister,<br>Urban Affairs, Government of Karnataka                                                   | Mr. Anil B. Suraj<br>Bannerghatta Road, Bangalore                                                  |
| Mr. Arpinder Singh<br>Partner & National Director<br>Fraud Investigation & Dispute Services<br>Ernst & Young Pvt. Ltd.<br>Mumbai         | Mr. Arun Katiyar<br>Consultant<br>Business Integrity Initiative Foundation<br>Bangalore            |
| Mr. Ashwin Mahesh<br>Professor, Indian Institute of Management,<br>Centre for Public Policy<br>Indian Institute of Management, Bangalore | Mr. B.H. Anil Kumar<br>Managing Director, Karnataka Roads<br>Development Corporation.<br>Bangalore |
| K. Bhanu Kumar<br>Executive Director<br>Bangalore                                                                                        | Mr. G. A. Balaji<br>Executive Engineer<br>Karnataka Lokayukta<br>Bangalore                         |
| Mr. J. R Bangera<br>President<br>Federation of Karnataka Chambers of<br>Commerce & Industry, Bangalore                                   | Mr. Kaardam Patel<br>Managing Director<br>Sharavati Conductors, Bangalore                          |
| Mr. Kiron D. Shah<br>Managing Director<br>Bangalore                                                                                      | Mr. L Ravi<br>General Manager Corporate Affairs, BESCOM<br>Bangalore                               |
| Ms. Latha Krishna Rao<br>Principal Secretary Tourism<br>Government of Karnataka<br>Bangalore                                             | Mrs. Manjula Geetha<br>Deputy Secretary<br>Infrastructure Development Department,<br>Bangalore     |
| Mr. N. Manjunath Prasad<br>IAS, Managing Director<br>Karnataka State Road Transport Corporation,<br>Bangalore                            | Mr. N. Sivasailam<br>Bangalore Metro Rail<br>Corporation LTD                                       |
| Mrs. Nagarathna<br>C/o Prof.VenkatRao<br>Vice Chancellor & Professor of Law<br>National Law School of India University<br>Bangalore      | Mr. P. R. Devi Prasad<br>Director, Fiscal Policy Institute<br>Govt. of Karnataka, Bangalore        |



|                                                                                                   |                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mr. Prithvi Chintapalli Reddy<br>Entrepreneur, Manufacturing & Engineering<br>Industry, Bangalore | Dr. R. S. Deshpande<br>Director, Institute of Social & Economic Change<br>Nagarbhavi, Bangalore                                                       |
| Mr. Rabi Sahoo<br>Principal Secretary<br>Infrastructure Development Department,<br>Bangalore      | Dr. Samuel Paul<br>Public Affairs Centre,<br>Bangalore                                                                                                |
| Mr. Sathyanarayana Rao<br>DG IPS<br>Karnataka Lokayukta, Bangalore                                | Mr. Subramaniam<br>Management Consultant, DPAR,<br>Bangalore                                                                                          |
| Mr. Subhasini Rao Kashyap<br>Consultant and Research Associate                                    | Mr. Subramanian Srilal<br>Management Consultant<br>Dept. of Personnel & Administrative Reforms.<br>Rural Development and Panchayati Raj,<br>Bangalore |
| Mr. Swaroop Iyengar<br>Team Member<br>Centre for Policy Research,<br>New Delhi                    | Mr. T. R. Raghunandan<br>Center For Policy Research,<br>New Delhi                                                                                     |
| Ms. Uthara Narayanan<br>Team Member<br>Centre for Policy Research,<br>New Delhi                   | Mr. V.R. Kamble<br>Managing Director<br>KPC, Bangalore                                                                                                |
| Mr. Vijay Anand<br>Co- Founder & President<br>5 <sup>th</sup> Pillar, Chennai                     | Mr. Vineet Mehta<br>Senior Manager<br>Fraud Investigation and Dispute Services<br>Ernst & Young Pvt. Ltd.<br>New Delhi                                |



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