

# Government contracting in India: Problems and solutions

Susan Thomas  
xKDR Forum

13 December 2021

## The importance of government contracting

1. Every government utilises tax resources to get anything done. Part of this is *procurement* – government buying goods, services and *works*.
2. In this action is embedded a choice to make (build own capacity) or to buy (from private parties).
3. “Make” in government organisations is often inefficient owing to difficulties of public management.
4. “Buy” faces difficulties in government contracting.
5. Diagnosing and solving bottlenecks of government contracting can be important in improving state capacity.

## The footprint of government contracting

## Government contracting is everywhere

- ▶ Fighter planes
- ▶ Vaccines
- ▶ Highways
- ▶ Electricity
- ▶ Space/defence/nuclear research: in-sourcing vs. contracting-out: the latter can be more effective in getting work done, and imposes greater spillovers upon the economy.

## How big is government contracting

- ▶ Surprisingly little regularly published information about the size of public procurement.
- ▶ Based on estimations of procurement in 2016-2017:
  - ▶ Union Government total expenditure = Rs.19.79 trillion,  
Estimated procurement expenditure = Rs.3.7 trillion (19%).
  - ▶ CPSE procurement estimate = Rs.13.8 trillion.
  - ▶ Sum total procurement estimate = Rs.17.5 trillion  
or 11.5% of GDP. (GDP was reported to be Rs.152.5 trillion that year.)



## Normative assessment of government contracting today

## The question

- ▶ There is a 1 acre plot of land
- ▶ A private person builds a 2 storey structure of 44k square feet on this
- ▶ The private person spends  $x_p$  and requires time  $t_p$ , and achieves a certain quality of the structure.

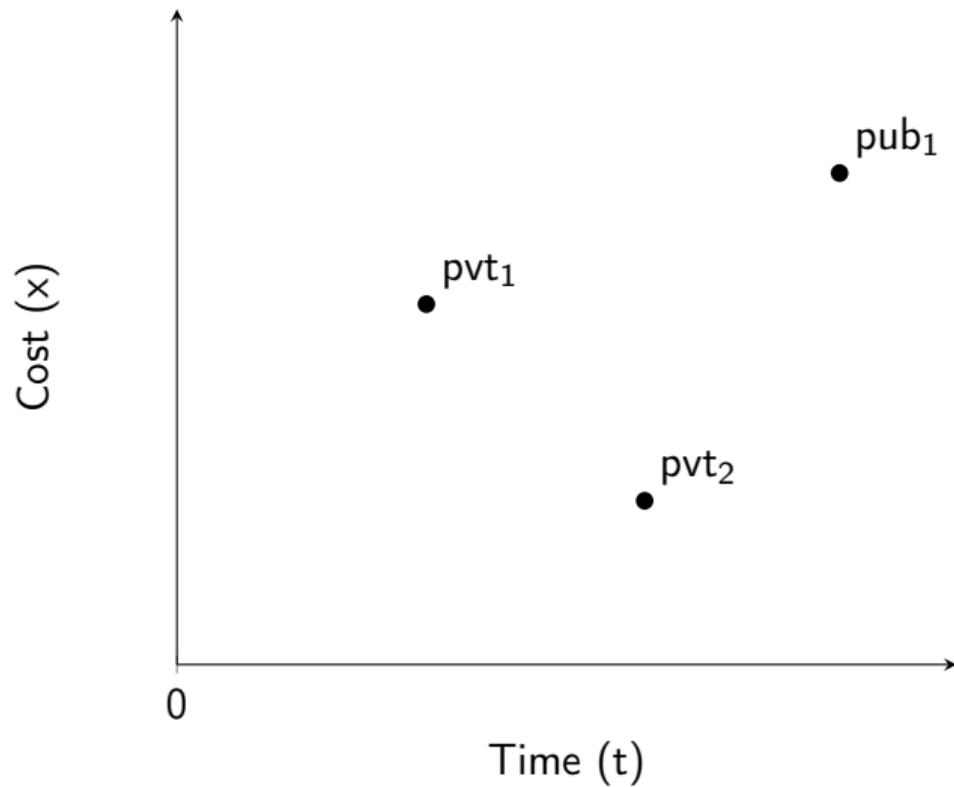
## The question

- ▶ There is a 1 acre plot of land
- ▶ A private person builds a 2 storey structure of 44k square feet on this
- ▶ The private person spends  $x_p$  and requires time  $t_p$ , and achieves a certain quality of the structure.
- ▶ When the government tries to do this, the quality of the resulting structure is equally good, the cost is  $x_g$  and required time is  $t_g$ .

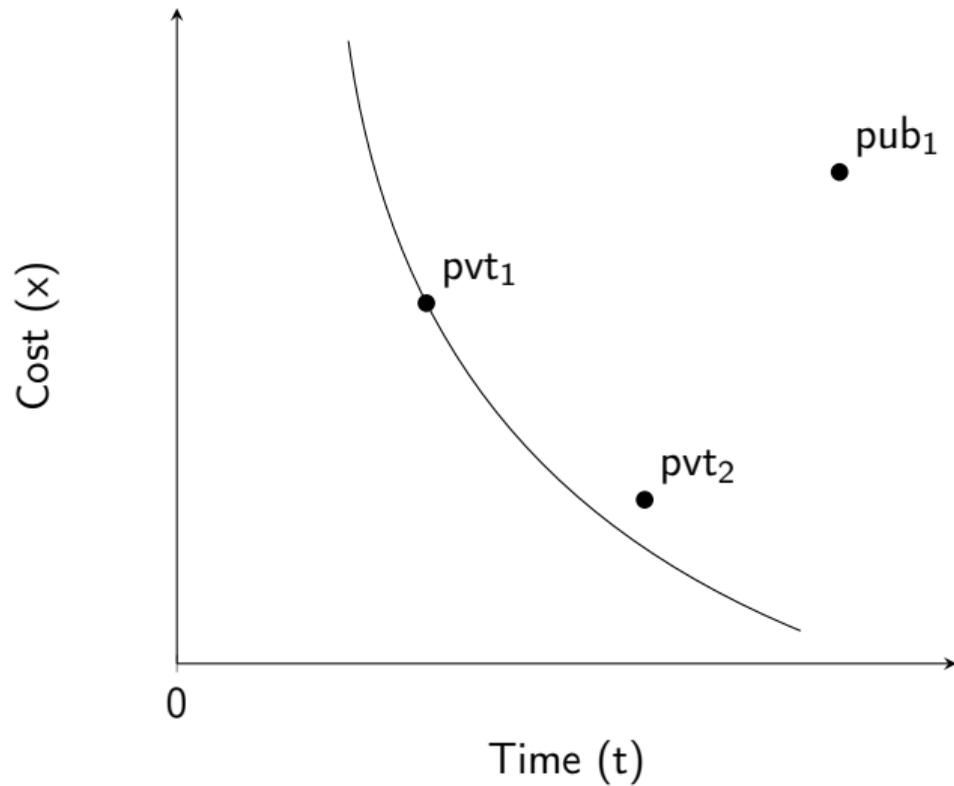
## The question

- ▶ There is a 1 acre plot of land
- ▶ A private person builds a 2 storey structure of 44k square feet on this
- ▶ The private person spends  $x_p$  and requires time  $t_p$ , and achieves a certain quality of the structure.
- ▶ When the government tries to do this, the quality of the resulting structure is equally good, the cost is  $x_g$  and required time is  $t_g$ .
- ▶ What are the values  $t_g/t_p$  and  $x_g/x_p$ ?
- ▶ If it is greater than 1, how can we get these to come closer to 1?

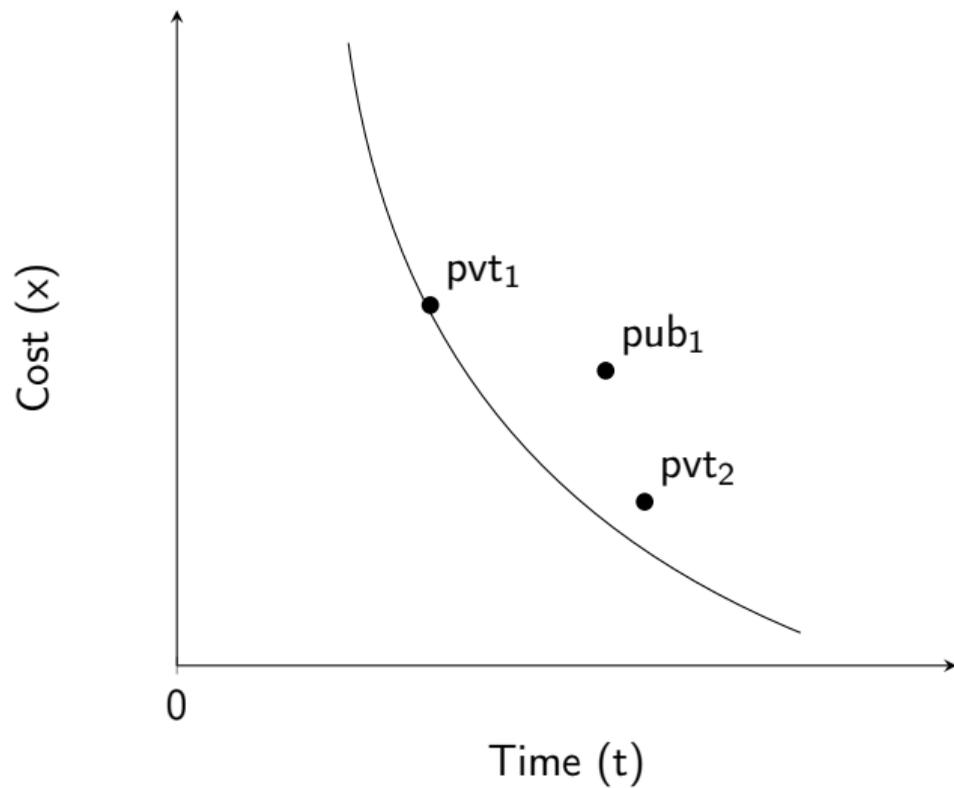
## Perception of public procurement efficiency



## A frontier of procurement efficiency

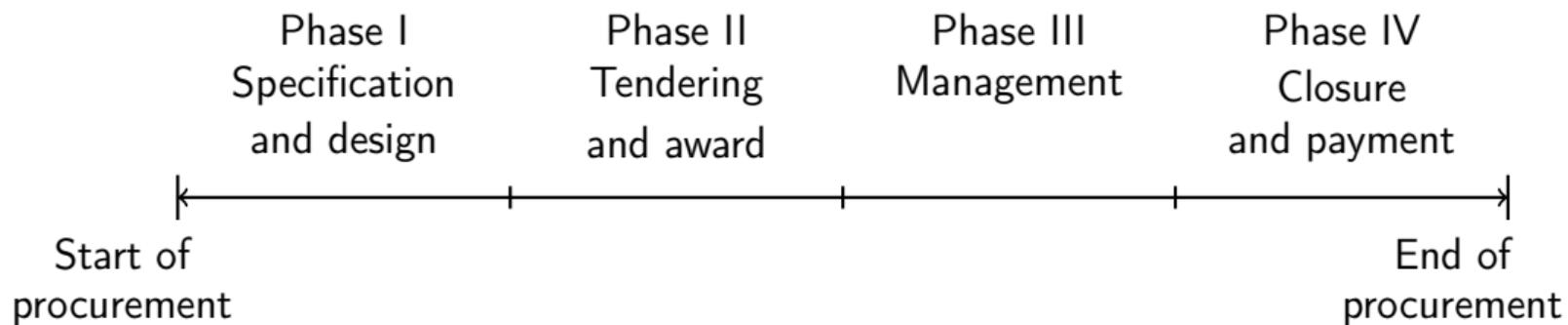


## Reforms objective – reaching the frontier



# How government contracting works today

# The process



# The institutions

- ▶ Government departments
- ▶ Public sector undertakings
- ▶ Statutory boards
- ▶ Special purpose vehicles

# The legal framework: An example of Water & Sanitation in Karnataka

Table: Typology of legal instruments by scope

Scope	Level	Instrument example
Process	Centre	(i) General: Contract Act 1872 (ii) Specific: GFR and manuals
	State	Transparency in Public Procurement Acts (Tamil Nadu: 1998; Karnataka:1999) Department codes
Institutions	Centre/State	Constitution of India
	State	Karnataka Municipal Corporations Act 1976 National Highways Authority of India Act 1988
Subject	Centre	Electricity Act 2003
	State	Karnataka Groundwater (Regulation for Protection of Sources of Drinking Water) Act, 1999

# Diagnosis

## Failure: high costs, delayed delivery

What can drive up cost and time in public procurement?

1. Corruption (drives up cost, unknown effect on time)
2. Delays in tendering ([Roy and Sharma, 2020](#) – analysis of tender modifications before award; [Mehta and Thomas, 2021](#) – analysis of COVID-19 vaccine tenders)
3. Delays in project execution (media reports of mid-project changes in project specifications, preliminary analysis of NHA litigation in Delhi HC)
4. Delays in payments ([Sharma and Zaveri-Shah, 2020](#), [Manivannan and Zaveri-Shah, 2021](#))

# Approaches to reform: Corruption

1. Rules rather than discretion binding actions of procurers
  - ▶ Present in the legal framework governing Phase II to Phase IV of government contracting.
  - ▶ Global evidence is not promising –  
No correlation between procurement law and corruption (Roy and Uday, 2020)
2. Process re-engineering using digital technology:
  - ▶ Electronic platforms to tender for bids
  - ▶ Smart contracts, Straight through payments.
  - ▶ Electronic platforms to lodge complaints
3. Statute of limitations on commercial contracts

# Approaches to reform: Delays in contracting

## 1. Rules with time limits on delays (Phases I–IV)

- ▶ E.g. General Instructions for procurement and project management on time to pay after receiving an invoice.
- ▶ However, the provisions are unclear on the consequences of failure to comply in all provisions.

Drafting of laws must incorporate procedural detail; incompleteness creates space for discretion and arbitrary power, which defeats the purpose.

## 2. Strengthening state capacity

- ▶ Even well-drafted rules cannot cover all contingencies;  
Contract designers need to respond to new procurement requirements – e.g., COVID-19 vaccine procurement  
Contract management will face changes in circumstances during medium- to long-maturity procurement contracts.
- ▶ Solution: assign responsibility of modifying contract to experts – e.g., General Instructions (2021) has multiple provisions that require expertise who will have the final authority.

## Approach to reform: transparency of public procurement

- ▶ Public policy thinking – problems in procurement arise because of low accountability of the state: Failure has low consequences
- ▶ Added problem in India: procurement failure in India has very low visibility.
  1. Policy-related concept papers and reports are difficult to find.  
These documents are not available in the public domain.
  2. CAG reports failures but there is a lack of follow-up on actions taken.
  3. We do see public procurement litigation.  
But case orders are non-standardised and challenging when analysing problems in public procurement.
- Electronic platforms have improved the visibility of the public procurement.
  1. The CPPP, MSME Sammadhan and similar platforms that are in place for public procurement tendering across states and sectors offer new visibility.
  2. These increase the link of accountability between state and citizen.
  3. Their impact on the public procurement process has yet to be understood.

## Summary

For the three paths to lower costs and time delays in Indian public procurement:

- Building rules that do not lose accountability while improving efficiency.  
Q: What should be the objective of legal reforms for public procurement? Is a focus on lowering corruption sufficient to move Indian public procurement towards an efficient frontier?  
Q: Where in the process are rules more effective? Where is discretion required?  
Q: How do we ensure rule of law while drafting and implementing these rules, from the higher authorities down to the line staff?
- Strengthening and expanding state capacity  
Q: How do we move from the existing ecosystem of departmental and external experts to a professional cadre of procurement experts?
- Increasing citizen engagement by improving the visibility of all stages of the public procurement process.  
Q: How do we ensure consistency of public access to information about public procurement?

Thank you.

<http://www.xkdr.org>