



**MAPS**

Methodology for Assessing  
Procurement Systems

# ASSESSMENT OF ANGUILLA'S PUBLIC PROCUREMENT SYSTEM

2019



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Anguilla

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Procurement system

March 2019

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# Acronyms

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AUF: Anguilla United Front

AUM: Anguilla United Movement

CDB: Caribbean Development Bank

CARICOM: Caribbean Community

CARIFORUM: Caribbean Forum

CARTAC: Caribbean Regional Technical Assistance Centre

DOVE: Democracy, Opportunity, Vision, and Empowerment Party

ECCU: Eastern Caribbean Currency Union

EDF: European Development Fund

ExCo: The Executive Council

GAU: Gender Affairs Unit

GDP: Gross Domestic Product

MICUH: Ministry of Infrastructure, Communications, Utilities & Housing

MoF: Ministry of Finance, Economic Development, Investment, Commerce & Tourism

OCTs: Overseas Countries and Territories

OECS: Organization of Eastern Caribbean States

PCCA: The Public Procurement and Contract Administration Act

SDGs: Sustainable Development Goals

SAI: Supreme Audit Institution

UNESCO: United Nations Educational, Scientific and Cultural Organization

UN MSDF: United Nations Multi-Country Sustainable Development Framework

XCD: Eastern Caribbean Dollar



# Executive summary

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Overall, the MAPS assessment highlights Anguilla's good progress in establishing a public procurement system that works efficiently and effectively. All in all, Anguilla has a solid system that produces acceptable results for its citizens. However, challenges remain in areas related to information technology and evidence-based performance monitoring, as well as in the area of integrity and accountability.

## **Pillar I**

Anguilla's legal framework is relatively complete with regards to procurement methods. Gaps relate to missing provisions in the legal and regulatory framework around the public procurement process; the complaints system; contract management; e-procurement; rules for recordkeeping and supporting tools. Some templates and standard documents exist, covering aspects of the public procurement process, but these model documents do not cover goods, works, services or the most common types of contracts. In addition, Anguilla's public procurement legal and regulatory framework does not take into account sustainable development or obligations deriving from international agreements. The assessors identified some red flags.

## **Pillar II**

Compliance with the indicators in this pillar is mixed: while Anguilla has the main institutions in place that regulate and conduct procurement, large gaps remain with regards to information technology and procurement capacity.

Overall, Anguilla meets the main criteria for the integration between the public procurement and public financial management system. However, some gaps relate to the feedback mechanism and a lack of rules for processing invoices and payments.

The Procurement Unit in the Ministry of Finance is the regulatory function for public procurement, but some essential responsibilities have not been assigned. Procuring entities and their mandates are defined, but there is no central purchasing body. Anguilla lacks information systems for public procurement and does not use e-procurement. As a consequence, performance monitoring is non-existent. While there are some aspects of training and advisory services that are fulfilled by the Procurement Unit, there is no structured approach to the professionalization of the procurement function, such as defined roles, skills requirements or career paths.

The assessors identified red flags for two indicators.

## **Pillar III**

Anguilla's procurement institutions, notably the Procurement Unit, function as prescribed in the law. Anguilla is in general obtaining the objectives it seeks through public procurement. Bulk purchases are being organised for several common items utilising a process carried out by the Department of IT and e-government services. Gaps relate to procurement planning, involvement of relevant stakeholders and record keeping and statistics. The Procurement Unit lacks contract implementation and amendment information.



In the context of a small island, the private sector is fairly competitive, organised, and interested in participating in the public procurement market. Companies do not have major constraints for participation. Anguilla’s procurement market is functional. Specific programmes target suppliers to create an environment of participation.

Challenges relate to the planning stage, as market analyses are neither carried out nor documented. Involvement of external stakeholders in the procurement system remains low; no formal fora for dialogue with the private sector exist.

Assessors did not raise red flags in this pillar.

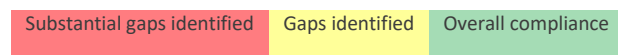
#### Pillar IV

While stakeholder engagement in public procurement processes is generally permitted, this engagement rarely takes place in practice since no interested civil society organisations or fora for dialogue exist. The small population of Anguilla allows for direct interaction between citizens and officials. Nevertheless gaps were identified because this direct interaction is not being utilised extensively in the context of procurement due to the lack of formal dialogue mechanisms between government and civil society and because of the confidentiality or unavailability of procurement documents necessary to audit and monitor procurements.

Anguilla’s audit system is relatively compliant. Gaps remain with regards to missing specifications in some areas, such as timeframes or internal audit. Anguilla has mechanisms for challenges and appeals in place, but the administrative procedure under the responsibility of the Procurement Ombudsman has never been used. Remedies are not possible.

Anguilla’s anti-corruption framework covers some vital functions, such as provisions, prevention of conflict of interest, and a debarment procedure. Gaps relate to reporting and training. Several red flags were raised for this indicator because of the serious gaps related to issues that lie outside of the procurement sphere and which cannot be mitigated, such as the absence of the following: civil society institutions for monitoring and auditing contracts, definitions of penalties for unethical behaviour, a complete anti-corruption framework and secure mechanisms for reporting prohibited practices.

### Overview of compliance



\* Red flag raised

PILLAR I	
<b>1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.</b>	1(a) – Scope of application and coverage of the legal and regulatory framework
	1(b) – Procurement methods
	1(c) – Advertising rules and time limits
	1(d) – Rules on participation
	1(e) – Procurement documentation and technical specifications
	1(f) – Evaluation and award criteria
	1(g) – Submission, receipt, and opening of tenders





	1(h) – Right to challenge and appeal *
	1(i) – Contract management *
	1(j) – Electronic Procurement (e-Procurement) *
	1(k) – Norms for safekeeping of records, documents and electronic data *
	1(l) – Public procurement principles in specialized legislation *
<b>2. Implementing regulations and tools support the legal framework.</b>	2(a) – Implementing regulations to define processes and procedures
	2(b) – Model procurement documents for goods, works, and services
	2(c) – Standard contract conditions
	2(d) – User’s guide or manual for procuring entities
<b>3. The legal framework reflects the country’s secondary policy objectives and international obligations</b>	3(a) – Sustainable Public Procurement (SPP) *
	3(b) – Obligations deriving from international agreements *

<b>PILLAR II</b>	
<b>4. The public procurement system is mainstreamed and well integrated into the public financial management system.</b>	4(a) – Procurement planning and the budget cycle
	4(b) – Financial procedures and the procurement cycle *
<b>5. The country has an institution in charge of the normative/regulatory function.</b>	5(a) – Status and legal basis of the normative/regulatory institution function
	5(b) – Responsibilities of the normative/regulatory function *
	5(c) – Organisation, funding, staffing, and level of independence and authority *
	5(d) – Avoiding conflict of interest
<b>6. Procuring entities and their mandates are clearly defined.</b>	6(a) – Definition, responsibilities and formal powers of procuring entities
	6(b) – Centralized procurement body *
<b>7. Public procurement is embedded in an effective information system.</b>	7(a) – Publication of public procurement information supported by information technology *
	7(b) – Use of e-Procurement *
	7(c) – Strategies to manage procurement data *
<b>8. The public procurement system has a strong capacity to develop and improve.</b>	8(a) – Training, advice and assistance *
	8(b) – Recognition of procurement as a profession *
	8(c) – Monitoring performance to improve the system *

<b>PILLAR III</b>	
<b>9. Public procurement practices achieve stated objectives.</b>	9(a) – Planning
	9(b) – Selection and contracting
	9(c) – Contract management
<b>10. The public procurement market is fully functional.</b>	10(a) – Dialogue and partnerships between public and private sector
	10(b) – Private sector’s organisation and access to the public procurement market
	10(c) – Key sectors and sector strategies



PILLAR IV	
<b>11. Transparency and civil society engagement foster integrity in public procurement.</b>	11(a) – Enabling environment for public consultation and monitoring
	11(b) – Adequate and timely access to information by the public
	11(c) – Direct engagement of civil society
<b>12. The country has effective control and audit systems.</b>	12(a) – Legal framework, organisation and procedures of the control system *
	12(b) – Coordination of controls and audits of public procurement
	12(c) – Enforcement and follow-up on findings and recommendations
	12(d) – Qualification and training to conduct procurement audits
<b>13. Procurement appeals mechanisms are effective and efficient.</b>	13(a) – Process for challenges and appeals *
	13(b) – Independence and capacity of the appeals body *
	13(c) – Decisions of the appeals body
<b>14. The country has ethics and anticorruption measures in place.</b>	14(a) – Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties *
	14(b) – Provisions on prohibited practices in procurement documents
	14(c) – Effective sanctions and enforcement systems *
	14(d) – Anti-corruption framework and integrity training *
	14(e) – Stakeholder support to strengthen integrity in procurement *
	14(f) – Secure mechanism for reporting prohibited practices or unethical behavior *
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules

## 1. Introduction

According to estimates by international organisations, public procurement represents 7 to 20% of a country's gross domestic product. Often, this share is considerably higher in small island states such as Anguilla. This context highlights the importance of public procurement in delivering essential public services, especially in a context of limited fiscal resources. As an indispensable means for delivering government activity, public procurement is imperative for achieving all aspects of the Sustainable Development Goals (SDGs). Public procurement also offers the opportunity to realise specific country objectives. Transparency and accountability, as well as governance as a whole, can be strengthened by strong public procurement systems. Public procurement also has an impact on employment, private sector growth and investment.

The recently revised Methodology for Assessing Procurement Systems (MAPS) provides a holistic assessment framework by establishing the criteria of an effective and efficient procurement system that countries should strive to achieve. Like the Sustainable Development Goals, MAPS is relevant for all countries, irrespective of income level or development status. This report details the findings of an assessment of the public procurement system in Anguilla, using the new MAPS (2018). The assessment was led by the Procurement Office in the Ministry of Finance, with support by the Caribbean Development Bank (CDB) and implemented by the Organisation for Economic Cooperation and Development (OECD),



with expert peer review from the CARICOM Secretariat, CDB, the UK Department for International Development (DFID) and the World Bank, who form the Technical Advisory Group (ITAG) for the project.

The assessment is part of a simultaneous assessment of five Eastern Caribbean States, Anguilla, Antigua and Barbuda, the British Virgin Islands, St. Kitts and Nevis and Montserrat. The primary objective of the assessment was to conduct a thorough, external assessment of Anguilla's public procurement system that reveals strengths and weaknesses, benchmarking the system with international good practices and standards. The findings of the assessment will be used to improve and reform public procurement in Anguilla, by providing concrete recommendations that can be prioritised and presented in a detailed action plan.

In the last five years, partly as a result of the need to better maximise scarce resources in an environment of high debt and low growth, a significant number of Caribbean States have demonstrated that they are committed to public procurement reform programmes. This is evidenced by the passing of new procurement legislation in several countries and the planning of reforms in others. In these reform agendas, countries see benefit in cooperating regionally and sharing experiences. In this context, this MAPS assessment has a second function of serving as a testing exercise, applying the recently revised methodology for the first time in a small-island developing country context.

This assessment was launched in the spring of 2018. The fact finding meetings were conducted in June 2018; a validation workshop was conducted in Washington, DC in September 2018. The project "dovetails" with a DFID funded, World Bank executed, procurement reform project covering Dominica, Grenada, Saint Lucia, and St. Vincent and Grenadines.

## 2. Analysis of Country Context

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### 2.1. Political, economic and geostrategic situation of the country

Anguilla is a self-governing British Overseas Territory with an area of 91 km<sup>2</sup> and some uninhabited small islands and cays. Its capital is The Valley and most of the population is concentrated there. The total estimated population is 15 000.<sup>1</sup>

According to the International Monetary Fund (IMF) the 2016 Nominal Gross Domestic Product (GDP) was 882,089,324 Eastern Caribbean Dollars (XCD).<sup>2</sup> Recently GDP has been affected by the global financial crisis and Hurricane Irma, which hit the island in 2017 and destroyed infrastructure.

Anguilla has few natural resources and it is unsuited in general for agriculture. The main economic sector is services, made up of luxury tourism, offshore banking, construction and remittances from emigrants.

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<sup>1</sup> Index Mundi, website: [https://www.indexmundi.com/world/demographics\\_profile.html](https://www.indexmundi.com/world/demographics_profile.html) (accessed 29 June 2018)

<sup>2</sup> International Monetary Fund (IMF), website: <http://www.imf.org/external/datamapper/datasets> (accessed 29 June 2018)



Despite its size, Anguilla financial sector is attractive because companies may be registered online. Anguilla offers a zero-tax regime and the use of bearer shares, that is, the issuing company does not need to register the owner of the stock nor track transfers of ownership. This is why this sector strongly opposes the British initiative to create a register of beneficial owners of enterprises created in its overseas territories.

Being a small island, Anguilla has important issues related to logistics. It is difficult to have products shipped in an expedited way to the island because of three main reasons: the hurricane season, requests for relatively small quantities, and the shallowness of the port for big vessels. Other characteristics of a small island are the good level of trust among inhabitants, who in general know each other, and the ease of approaching high-level government officials.

In September 2017, Hurricane Irma had a negative effect on the income generating capacity of Anguilla, especially in the tourism sector. For that reason, during the first four months of 2018, the government worked to have a budget that recognised the new conditions of the island in terms of the restoration that allows the recovery, without affecting revenue collection.

The 2018 budget was approved at the end of April and included measures for recovery. Moreover, the Inter-Ministerial Group agreed to release funding for six critical recovery projects from the 60-million-pound humanitarian funding given to Anguilla by the United Kingdom in November 2017.<sup>3</sup> These projects included the refurbishment of critical national infrastructure such as the airport control tower. The Caribbean Development Bank (CDB) approved an additional loan to pay the public debt and to facilitate the financial restoration of the island economy.<sup>4</sup>

Anguilla is a parliamentary democracy where the Chief Minister (Victor F. Banks) is the head of government. The government has four ministries: finance; social development; home affairs; and infrastructure, communications, utilities and housing (MICUH).

The Governor (Tim Foy) is the representative of the British Crown who exercises executive authority on behalf of Her Majesty the Queen. The Governor has constitutional responsibilities, which include oversight for external affairs, defence, internal security and international financial services. The Public Service is a responsibility of the Deputy Governor (Perin Bradley).

The legislative power rests with the House of Assembly and the main parties are the Anguilla United Front (AUF), the Anguilla United Movement (AUM) and the Democracy, Opportunity, Vision, and Empowerment Party (DOVE).<sup>5</sup>

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<sup>3</sup> Government of Anguilla. YouTube channel (24 April 2018), “2018 Budget Speech”, <https://www.youtube.com/watch?v=wqOppqcEHFw> ; The Daily Herald, “Anguilla Govt. announces approval of 2018 budget”, website: <https://www.thedailyherald.sx/islands/76160-anguilla-govt-announces-approval-of-2018-budget> (accessed 29 June 2018)

<sup>4</sup> Caribbean Development Bank, website: <http://www.caribank.org/news/anguilla-to-receive-usd5-6-mn-loan-from-cdb-to-meet-debt-obligations> (accessed 29 June 2018)

<sup>5</sup> Caribbean Elections, website: [http://www.caribbeanelections.com/knowledge/parties/ai\\_parties/default.asp](http://www.caribbeanelections.com/knowledge/parties/ai_parties/default.asp) (accessed 29 June 2018)



The Anguilla judicial branch is administered by two domestic courts (the Magistrates Court and the Juvenile Court), the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court of Justice. There is a final right of appeal to the Privy Council in the United Kingdom.

In Anguilla, women have succeeded in attaining high public positions like several of the Permanent Secretaries in the Government Departments and two of Anguilla’s nine Parliament seats.

Levels of crime are relatively low. According to the Royal Anguilla Police Force, the top crimes in the island are burglary, theft, robbery, sexual violence and firearm-related offences. Recently there has been an increase in male youth gang violence. However, the state is working to combat organised crime and the citizens generally trust in the police.<sup>6</sup>

Anguilla has its own Constitution but as a British Overseas Territory, the United Kingdom represents Anguilla in international fora. For that reason, Anguilla cannot sign or ratify international conventions, but the Government of the United Kingdom has extended several and important treaties to Anguilla, such as the International Convention for the Suppression of the Financing of Terrorism, the Convention on the Elimination of All Forms of Discrimination against Women, among others.<sup>7</sup> However, important conventions, such as the United Nations Convention against Corruption, have not been extended to Anguilla.<sup>8</sup> Anguilla participates in international organisations, as a member, observer or associate, as evidenced in the following table.

ORGANISATION	TYPE
<b>Caribbean Forum (CARIFORUM)</b>	OBSERVER
<b>Caribbean Development Bank (CDB)</b>	MEMBER
<b>Eastern Caribbean Currency Union (ECCU)</b>	
<b>Organization of Eastern Caribbean States (OECS)</b>	
<b>United Nations Educational, Scientific and Cultural Organization (UNESCO)</b>	ASSOCIATE
<b>Caribbean Community (CARICOM)</b>	
<b>Caribbean Community Climate Change Centre (CCCC)</b>	

Finally, in accordance with Article 198 of the Treaty on the Functioning of the European Union, Anguilla is part of an important association that exists between the European Union and the Overseas Countries and Territories (OCTs). The main purpose of this union is the promotion of the economic and social development. This cooperation is reflected in the European Development Fund (EDF), which has been allocated €14 million for cooperation for the period 2014-2020 and has supported the Public Finance Management.<sup>9</sup> One of the consequences of the United Kingdom leaving the European Union (“Brexit”)

<sup>6</sup> Royal Anguilla Police Force, website: <http://www.gov.ai/police/indexR.html> (accessed 29 June 2018)

<sup>7</sup> Foreign and Commonwealth Office (2012), “The Overseas Territories”, [www.official-documents.gov.uk](http://www.official-documents.gov.uk)

<sup>8</sup> United Nations Treaty Collections, website: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-14&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&clang=_en) (accessed 29 June 2018)

<sup>9</sup> European Development Fund, website: [https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments/european-development-fund\\_en](https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments/european-development-fund_en) (accessed 29 June 2018)



could be the end of this partnership. In any case, the UK Government has stated that this type of funding will continue until 2024.

## 2.2. The Public Procurement System and its links with the public finance management and public governance systems

The precise scope of public procurement in Anguilla is not known, given that publically available national statistics do not allow calculating which share public procurement represents in GDP and in total government expenditure.

Although the Ministry of Finance has the main oversight over the public procurement system, the 2017 Budget Address as one of the main operative financial documents does not make reference of procurement. This illustrates that public procurement is not approached strategically nor considered a powerful tool for materialising policy, spending budget and delivering public goods to citizens.

The institutional framework for public procurement is overseen by the Public Accounts Committee and the Executive Council (ExCo). The ExCo is tasked with maintaining and updating the 2016 Procurement Regulation, supported by the Procurement Board. The Procurement Unit, part of the Ministry of Finance, comprises the (i) Procurement Office; (ii) Procurement Committees across government; and (iii) Procurement Board. The Procurement Office is managed by a Chief Procurement Officer. The procurement committees are established at the level of each ministry. The Procurement Board is responsible for the administration of government procurement and in this regard shall oversee and manage the operation of the Procurement Unit. Procurement policy is formulated by the Executive Council, the Ministry of Finance and the Procurement Board. The Procurement Office and the procurement committees implement the policy.

There are evaluation committees to evaluate offers and proposals. The members are selected by the procurement committees for the procurement process. Evaluation committees are established for each particular procurement process.

The Chamber of Commerce of Anguilla is a key institution in the procurement system. While there is no formal dialogue system in place, the chamber does represent the private sector and interacts with suppliers. The multilateral development banks and bilateral development agencies play an important role in the procurement system due to the high volume and share of the resources invested in the country, and their ability to influence the procurement procedures used for the projects they finance.

The latest PEFA assessment (2014) was conducted prior to the substantial 2016 reform of the public procurement system.



## 2.3. National policy objectives and sustainable development goals

Anguilla is part of the United Nations Multi-Country Sustainable Development Framework (UN MSDF) that supports the realisation of the Sustainable Development Goals (SDGs)<sup>10</sup>.

The priority areas that inform the national and regional actions of the UN MSDF are:

1. *A sustainable and resilient Caribbean.* This focus area is related to SDG 13 and aims for an implementation of policies and programmes for adapting to climate change, reducing disaster risk and having universal access to clean and sustainable energy in place. This is implemented in Anguilla in the National Comprehensive Disaster Management Policy (of which the MICUH is in charge), and the Disaster Management Act of 2007, among other instruments.
2. *A safe, cohesive and just Caribbean.* The main purpose of this focus area is to establish the capacities of public policy and rule of law institutions and to strengthen civil society organisations. It also aims to have an equitable access to justice, protection, citizen security and reinforced safety.
3. *A healthy Caribbean.* This focus area consists on guaranteeing universal access to quality health care services and improved systems. To fulfil this purpose, the Government of Anguilla has enacted legislation including the National Health Fund Act of 2016 and the Public Health Act of 2016.
4. *An inclusive, equitable and prosperous Caribbean.* This means that the government must guarantee access to quality education, and decent and sustainable economic development with access to equitable social protection systems. The Education Act of 2016 establishes in section 2 that “the purpose of this Act is provide a coordinated development of a relevant, varied and comprehensive educational system in Anguilla characterised by the excellence”.

One of the main purposes of the Government of Anguilla is education. It is considered one of the most important aspects to achieve economic and social development, and also a human right. However, there are gender disparities in enrolment access to education, especially at the tertiary level and adolescent pregnancies are an issue, despite programme efforts to reduce them.

The Government of Anguilla has a Gender Affairs Unit (GAU) that is part of the Ministry of Home Affairs. This Unit has the function of planning, developing and coordinating the gender policy that includes the gender equality in the workplace. One of the country’s most important challenges is related to violence against women. Despite passing a law (Domestic Violence Bill 2014), there is still work to be done to strengthen its implementation, including allocating more resources to the GAU which currently is only staffed with one person.<sup>11</sup>

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<sup>10</sup> United Nations Caribbean, website: <http://www.2030caribbean.org/content/unct/caribbean/en/home/MSDF/overview.html> (accessed 29 June 2018)

<sup>11</sup> The Government of Anguilla, website: <http://www.gov.ai/departement.php?id=3&dept=41> (accessed 29 June 2018)



## 2.4. Public Procurement Reform

Anguilla has recently undertaken a reform of the public procurement legal framework. The Public Procurement and Contract Administration Act was first issued in 2012. The goal of this reform was to create a legal and regulatory framework that complies with generally accepted international standards, particularly the UNCITRAL Model Law on Procurement of Goods, Construction and Services. The purpose of the Act was to simplify, clarify and modernise procurement and to make it transparent, requiring competition, encouraging broad participation, providing for increased public confidence, ensuring fair treatment and ensuring best value. In 2016, the Act was amended to clarify and complement the 2012 Act.

Anguilla has followed the path of procurement reform that has been ongoing in the region with regards to public procurement. The state has implemented most of the elements of this reform process, and has taken advantage of the collaboration among the Caribbean islands to procure pharmaceuticals.





## 3. Assessment

### Overview of compliance with MAPS indicators

Substantial gaps identified   Gaps identified   Overall compliance

\* Red flag raised

PILLAR I	
<b>1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.</b>	1(a) – Scope of application and coverage of the legal and regulatory framework
	1(b) – Procurement methods
	1(c) – Advertising rules and time limits
	1(d) – Rules on participation
	1(e) – Procurement documentation and technical specifications
	1(f) – Evaluation and award criteria
	1(g) – Submission, receipt, and opening of tenders
	1(h) – Right to challenge and appeal *
	1(i) – Contract management *
	1(j) – Electronic Procurement (e-Procurement) *
	1(k) – Norms for safekeeping of records, documents and electronic data *
1(l) – Public procurement principles in specialized legislation *	
<b>2. Implementing regulations and tools support the legal framework.</b>	2(a) – Implementing regulations to define processes and procedures
	2(b) – Model procurement documents for goods, works, and services
	2(c) – Standard contract conditions
	2(d) – User’s guide or manual for procuring entities
<b>3. The legal framework reflects the country’s secondary policy objectives and international obligations</b>	3(a) – Sustainable Public Procurement (SPP) *
	3(b) – Obligations deriving from international agreements *

PILLAR II	
<b>4. The public procurement system is mainstreamed and well integrated into the public financial management system.</b>	4(a) – Procurement planning and the budget cycle
	4(b) – Financial procedures and the procurement cycle *
<b>5. The country has an institution in charge of the normative/regulatory function.</b>	5(a) – Status and legal basis of the normative/regulatory institution function
	5(b) – Responsibilities of the normative/regulatory function *
	5(c) – Organisation, funding, staffing, and level of independence and authority *
	5(d) – Avoiding conflict of interest
<b>6. Procuring entities and their mandates are clearly defined.</b>	6(a) – Definition, responsibilities and formal powers of procuring entities



	6(b) – Centralized procurement body *
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology *
	7(b) – Use of e-Procurement *
	7(c) – Strategies to manage procurement data *
8. The public procurement system has a strong capacity to develop and improve.	8(a) – Training, advice and assistance *
	8(b) – Recognition of procurement as a profession *
	8(c) – Monitoring performance to improve the system *

PILLAR III	
9. Public procurement practices achieve stated objectives.	9(a) – Planning
	9(b) – Selection and contracting
	9(c) – Contract management
10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector
	10(b) – Private sector’s organisation and access to the public procurement market
	10(c) – Key sectors and sector strategies

PILLAR IV	
11. Transparency and civil society engagement foster integrity in public procurement.	11(a) – Enabling environment for public consultation and monitoring
	11(b) – Adequate and timely access to information by the public
	11(c) – Direct engagement of civil society
12. The country has effective control and audit systems.	12(a) – Legal framework, organisation and procedures of the control system *
	12(b) – Coordination of controls and audits of public procurement
	12(c) – Enforcement and follow-up on findings and recommendations
	12(d) – Qualification and training to conduct procurement audits
13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals *
	13(b) – Independence and capacity of the appeals body *
	13(c) – Decisions of the appeals body
14. The country has ethics and anticorruption measures in place.	14(a) – Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties *
	14(b) – Provisions on prohibited practices in procurement documents
	14(c) – Effective sanctions and enforcement systems *
	14(d) – Anti-corruption framework and integrity training *
	14(e) – Stakeholder support to strengthen integrity in procurement *
	14(f) – Secure mechanism for reporting prohibited practices or unethical behavior *
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules

Note that in a number of areas, including supplier participation, contract management, and the selection and award process, no quantitative data was provided to assess the quantitative assessment criteria. This suggests that further efforts to collect, manage and publish quantitative procurement data may be



warranted to promote transparency and support analysis of the performance of the public procurement system in Anguilla.

### 3.1. Pillar I - Legal, Regulatory and Policy Framework

This Pillar assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards.

This Pillar includes three indicators focused on (i) the legal framework, including its scope and completeness, addressing the existence of rules regulating the most important requirements and stages of the procurement process; (ii) the existence of regulations to support the higher levels of the legal framework, as well as tools (guides, manuals) to support its application; and (iii) the existence and development of a sustainable procurement agenda.

The public procurement legal framework and regulations of Anguilla covers most of the assessment criteria, starting from its organization and completeness. Some template documents exist. Gaps relate to missing provisions in the legal and regulatory framework that would regulate details of the public procurement process, e-procurement, and supporting tools. In addition, Anguilla's public procurement legal and regulatory framework does not take into account sustainable development or obligations deriving from international agreements.

#### Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

This indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents formally in use.

Overall, Anguilla partially complies with indicator 1. Gaps remain with regards to several details as described below. The 2012 Public Procurement and Contract Administration Act (PPCAA) represents the cornerstone of the public procurement legal and regulatory framework in Anguilla. In addition, the Public Procurement and Contract Administration Regulations (2016) and the draft of the Public Procurement Procedures Manual contain relevant provisions as well.

#### Findings

Anguilla's legal framework is hierarchically organised and covers goods, works and services.

The Fiscal Responsibility Act of 2013 refers to PPPs and novel financing arrangements. However, the act does not specify a set process to follow in such specialised contracting methods.

The regulated procurement methods include a range of both competitive and non-competitive options. For all methods, the applicable standards for its use are well determined.



The assessors identified smaller gaps related to the following elements that are currently not specified in the legal and regulatory framework, but could be addressed with relatively minor changes to the legal and regulatory framework:

- publication of the entire legal framework in a government web page,
- required content of the notice for a call for tenders,
- general criteria for eligibility and exclusions,
- rules and procedures regarding the qualification and prequalification of bidders, and
- general criteria to evaluate proposals (the criteria is defined in the procurement documents).

### **Substantive gaps**

Aside from the gaps mentioned above, the following gaps are considered substantive because they affect the competitiveness of the procurement system and legal certainty. Of concern are the absence of:

- administrative procedures to review decisions within the procurement process other than the Procurement Ombudsman. The Ombudsman is responsible for investigating complaints arising after the award of the contract, but he has not been called into action;
- norms for records safe keeping;
- rules regarding SOE participation in the procurement process;
- contract management provisions including rules for amending contracts and on how to handle disputes;
- planning for the development of an e-Procurement system; and
- principles and norms for specialised legislations like PPPs and concessions.

Due to the central role of the concerned tasks for the functioning of the public procurement system in achieving its goals, a red flag is assigned to sub-indicators 1 (h) to (l) and these gaps are classified as high risk.

### **Recommendations**

Anguilla could consider reviewing the current legal and regulatory framework to include provisions to address the gaps highlighted in the previous sections.

One of the most important gaps relates to the lack of a comprehensive mechanism, engrained in the law, by which suppliers can lodge complaints and appeal procurement decision during the procurement process. Not granting suppliers the right to voice complaints in relation to the public procurement process, by whatever mechanism, affects the competitiveness of Anguilla. The review of the complaint system requires further analysis and understanding of the judicial system and probably an intervention at the level of act or law. The existing mechanism of the Procurement Ombudsman concerns complaints arising *after* the award of the contract. In addition, the Ombudsman shall not recommend the cancellation of the award to which the complaint relates.

Secondly, the Government of Anguilla could consider adopting an e-Procurement strategy. E-Procurement can offer considerable gains in the area of efficiency and effectiveness, particularly in contexts with low human capacity.

Additional provisions could be included in the legal and regulatory framework (notably in the PPCAA) to establish the following detailed aspects of the public procurement cycle:



- minimum time frame between call for proposals and their submission,
- required content of the call notice,
- general criteria for eligibility and exclusions of bidders,
- qualification and prequalification of bidders,
- mandatory use of international or neutral standards to describe specifications of goods or services to be procured, and
- general criteria to evaluate proposals.

In addition, rules could be included in the PPCAA to establish security procedures for the area of public procurement, both at a physical and electronic level. A set of provisions covering contract management could be part of the public procurement act.

## Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. This indicator is divided into 4 sub-indicators that address the existence of regulations that implement the legal framework and the development of support tools as manuals, guides and standard contracts.

Overall, Anguilla's public procurement regulations are complete and do not contradict the PPCAA. Some standard documents exist, covering aspects of the public procurement process, but these model documents do not cover goods, works and services and the most common types of contracts.

### Findings

Anguilla's Public Procurement Regulation (adopted in 2016) contains clearly defined rules, not contradicting the PCCA, but supplementing its provisions. In fact, most of the applicable rules for public procurement are defined at a regulatory level, and not in the PCCA. It is important to note that there is access to the entire regulatory framework for public procurement online, but it is not published in a location that is easily identifiable: unlike the law, the regulation is only published in the Gazette, not in the government website.

Anguilla does have some standard documents prepared by the Chief Procurement Officer that serve to support specified types of procurement and contain some standard contracting conditions for these specific cases.

### Substantive gaps

One substantive gap was identified and relates to the fact that regulations are not easily accessible. This is important to maintain transparency regarding public procurement decision making, and in turn to create a level playing field for the public procurement market. As a result, this gap was classified as high risk.

There are no model procurement documents or standard contracting conditions for a range of goods, works and services, although the PCCA requires the Chief Procurement Officer to develop these documents. Model procurement documents and standard contracting conditions can support procurers in conducting procurements, resulting in higher rules compliance, more efficient management of the



public procurement cycle and clear expectations vis a vis the suppliers. This gap was classified as a medium risk.

### **Recommendations**

In line with the identified gaps, the first and most important proposal relates to the publication of the entire public procurement legal and regulatory framework in one consolidated, easily accessible web portal, without any barriers for access. This measure would increase transparency and in turn certainty about the rules of public procurement, both for public procurers and for potential suppliers that are interested in participating in procurements.

The second recommendation relates to tools supporting the implementation of the public procurement process. The Procurement Office with the approval of the Procurement Board could expand the available support tools with the formal issuance of the draft of the Public Procurement Procedures Manual. This could include an obligation to use it. It could also contain:

- model procurement documents, and
- standard contracts and clauses for the most common contracts covering a wide range of goods, works and services.

The Procurement Board could take charge in developing and publishing a comprehensive suite for public procurers. The Procurement Board could define and execute a plan to this end, evaluating what kind of support documents are most needed. The plan might prioritize the documents to be prepared, and identify the required resources to develop them.

### **Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations**

This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, i.e. whether the legal framework is coherent with the higher policy objectives of the country.

This indicator is not met as Anguilla does neither make consideration of sustainable procurement nor international obligations in the legal and regulatory framework for public procurement.

### **Findings**

There is no reference to a Sustainable Procurement Policy or to Anguilla's international obligations in the legal and regulatory framework for public procurement.

### **Substantive gaps**

The lack of references to a Sustainable Procurement Policy and to Anguilla's international obligations regarding public procurement is a substantive gap. Without considerations of these overarching policy frameworks in the public procurement rules, there is a high risk that public procurement operations go against national goals and jeopardise their achievement. For this reason, a red flag is assigned to this indicator.



## Recommendations

In this case, the Government of Anguilla could evaluate the need to include a reference to sustainable public procurement or sustainable development and public procurement in the legal framework. In addition, the government could identify obligations derived from international instruments that have a bearing on public procurement. In both cases, the government might find it beneficial to evaluate if changes in the PPCAA or in the public procurement regulation are required. Changes should balance the need for aligning procurement operations with overarching goals and the transaction costs for making these changes.

## 3.2. Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.

The Pillar is composed of 5 indicators focused on (i) how well the public procurement system is mainstreamed and integrated into the public financial management system, (ii) whether the country has an entity in charge of the normative/regulatory function, (iii) how procurement entities and their mandates are clearly defined, (iv) how public procurement is embedded in an effective information system, and (v) if the public procurement system has a strong capacity to develop and improve.

Compliance with the indicators in this pillar is mixed: while Anguilla has the main institutions in place that regulate and conduct procurement, large gaps remain with regards to information technology and procurement capacity.

While detailed financial procedures are not regulated, public procurement is conducted on the basis of budget planning.

The Procurement Unit in the Ministry of Finance is the regulatory function for public procurement, but some essential responsibilities have not been assigned. Procuring entities and their mandates are defined, but there is no central purchasing body. Anguilla lacks information systems for public procurement and does not use e-procurement. As a consequence, performance monitoring is non-existent. While the Procurement Unit fulfils are some aspects of training and advisory services, there is no structured approach to the professionalization of the procurement function, such as defined roles, skills requirements or career paths.

### Indicator 4. The public procurement system is mainstreamed and well integrated with the public financial management system

This indicator focuses on how well integrated the procurement system is with the public financial management system. The financial system of Antigua is well connected with the procurement system except for the absence of a general procedure for processing invoices and payment arising from performance of contracts.



Overall, Anguilla meets the main criteria for the integration between the public procurement and public financial management system. However, some gaps relate to the feedback mechanism and a lack of rules for processing invoices and payments.

### **Findings**

The procurement plan is a rolling annual plan. Budgets are committed to procurements in a timely manner, covering the entire procurement budget: Before the procurement process starts, the Procurement Committee shall state the type of funding to be used, the source of funds and the procurement budget. Payments under a contract are subject to an appropriation for the particular acquisition for the financial year.

Gaps were identified relating to the feedback mechanism to report budget execution for major contracts, which does not exist; neither is there any procedure specified for processing payments and authorising invoices.

### **Substantive gaps**

A substantive gap identified in this indicator is that there are no procedures for processing of invoices and authorisations of payments. This is problematic as ambiguity over procedures results in uncertainty for suppliers and public officials, and can potentially create opportunities for corruption. As a result, this gap is classified as high risk.

In addition, no information was available to assess the quantitative indicator (share of invoices paid on time.) Visibility of this quantitative indicator could contribute to improving supplier engagement. Timely payment is central for suppliers, and a lack of timely payments is often a disincentive for participation in bids. Low competition, in turn, can reduce competition and ultimately affects the efficiency and effectiveness of public procurement and this gap was classified as a high risk.

### **Recommendations**

It is recommended that Anguilla define procedures for processing invoices and authorising payments to establish clear expectations for all parties involved in the public procurement process. In addition, Anguilla could refine the feedback mechanism for budget execution, to increase visibility about how and whether public funds are adequately spent.

## **Indicator 5. The country has an institution in charge of the normative/ regulatory function**

This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organisations.

Most of the assessment criteria are covered. There is an organisational structure to address the normative and regulatory function and its functions include many of the responsibilities defined in this indicator.

### **Findings**

The Procurement Unit, established in the Ministry of Finance, comprises:





- 1) the Procurement Office,
- 2) the Procurement Committees, and
- 3) the Procurement Board.

The Chief Procurement Officer manages the Procurement Offices in the Ministry of Finance. The following table outlines the distribution of tasks between the Chief Procurement Officer and the Procurement Committee:

Chief Procurement Officer	Procurement Committee
Provide advice to the departments, the Board and any other relevant stakeholders on public procurement policies and practices.	Procurement planning for the Ministry of Finance and its departments.
Oversee and assist in coordinating the work of the Procurement Board.	Developing, implementing, monitoring and reviewing a procurement plan and submitting it to the Chief Procurement Officer.
Foster the development of procurement professionals.	Preparations for submitting bid documents and invitation for bids to the Procurement Office.
Following consultation with the Procurement Committee or the Board, prepare standard solicitation document for any method of procurement for approval by the Board.	Conducting small procurement (less than XCD 54 000).
Under the direction of the Board, develop and periodically update a procurement manual for use by all persons involved in procurement.	Selecting the members of the evaluation committee.
Attend Board meetings at the request of the chairpersons.	Ensuring that procurement is done in accordance with the Act and that it possesses current information of the status of a procurement.
Perform any other duties and exercise any other powers in relation to procurement as are assigned to him or her by the Board.	Securing and filling all procurement documents and recording all deliberations and decisions of meetings.

The Procurement Board is the responsible entity tasked with the normative and regulatory function for public procurement in Anguilla. The board was created through the PCAA and its functions and responsibilities are detailed in the regulations.

Where specified in the law, the Procurement Board covers the responsibilities required by sub-indicator 5(b), except the duties related to monitoring public procurement, providing procurement information, managing statistical databases and preparing reports on procurement to other parts of government. There are opportunities to improve the procurement systems in particular with assigning responsibilities for training tools and capacity development, the conflict management regime and the development of centralised online platforms for the public procurement system. In addition, there is no responsible institution for training on public procurement.

The Chief Procurement Officer has a standing that allows her to fulfil her functions appropriately. Staffing seemed to be sufficient and consistent with the required tasks. However, there are no specifications in



the legal and regulatory framework that relate to financing for the normative and regulatory function for public procurement in Anguilla.

The Procurement Board has a system in place to avoid conflict of interest. The members of the Board or any of the committee shall disclose his/her financial interest and withdraw from any meeting in which a matter of his/her interest is being considered and refrain from expressing views or participating in decisions related to such interest. The PCAA states that the Ministry of Finance may develop a code of conduct defining ethical standards of persons participating in procurement. However, no such code has been developed to date.

### **Substantive gaps**

A substantive gap in this indicator relates to the lack of provisions to manage conflict of interest. Such provisions set clear expectations and support procurers as well as suppliers in a fair interaction.

The fact that Anguilla does not have a responsible party assigned that monitors public procurement, provides procurement information, manages statistical databases and prepares reports on procurement to other parts of government, are substantive gaps. The analysis of procurement data drives improvements, which is why it is critical to assign these duties clearly.

These gaps were classified as medium risk.

### **Recommendations**

The first recommendation is to assign the responsibilities clearly for:

- monitoring public procurement,
- offering procurement data to all stakeholders and to the public in general,
- generating and managing the procurement data;
- preparing reports to other authorities; and
- organising and using the data to improve the procurement system.

These elements could be specified either in the regulation detailing the tasks of the Procurement Board, or in a dedicated charter or statutes for the Procurement Board. The government might want to evaluate what types of rules are most adequate to define these tasks.

Secondly, the Government of Anguilla could define the responsible authority for preparing a training programme for procuring officers, including tools and instruments (see also indicator 8.)

The third recommendation is to develop a code of conduct defining ethical standards of persons participating in procurement.

## **Indicator 6. Procuring entities and their mandates are clearly defined**

This indicator assesses: (i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; (ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and (iii) whether a centralised procuring entity exists.



Procuring entities are defined, as well as a Procurement Committee, the role of the Chief Procurement Officer and the Procurement Board (for their responsibilities, see indicator 5.) In terms of the existence of a centralised procurement body, there is no evidence of demand aggregation.

### **Findings**

Regulations clearly define the entities that can conduct procurement activities and the applicable procedures. It establishes the responsibilities of the Procurement Board and defines the thresholds that must be considered in order to define the procuring responsibility.

Most of the responsibilities that are subject to assessment according to sub-indicator 6(b) are covered by the functions of the procurement entity. However, gaps relate to the absence of

- coordination system for the procuring entities and the members of the Procuring Unit; and
- an accountability regime.

There are ad hoc initiatives of centralised procurement, but centralised purchasing has not been regulated.

### **Substantive gaps**

The most substantive gap relates to the absence of a centralised procurement procedure. Anguilla would be able to reap substantive benefits from economies of scale that could be achieved by purchasing centrally.

In addition, there is no clear accountability regime for the Procurement Board.

No quantitative information was provided to assess the quantitative assessment criteria on the procuring entities with a designated, specialised procurement function. Visibility about the number, characteristics and needs of entities across the government that procure is central for planning adequate public procurement strategies and can ultimately ensure more efficient and effective public procurement.

These gaps were classified as medium risk.

### **Recommendations**

The Government of Anguilla could evaluate the possibility to institutionalise a centralised purchasing system for standardised goods, works and services that are that are procured repeatedly by several procuring entities. This will require to define a policy on this type of procedures and to define the institutional requirements, as well as responsibilities. While this will require some initial effort and expense, in the long run a central procurement function is expected to result in financial savings, a capacity relief for procurement officials and increased compliance in procurement procedures.

In addition, Anguilla could define an accountability mechanism for procuring entities, and in particular the Procurement Board.

Finally, the Government of Anguilla could develop a coordination mechanism aiming at sharing procurement data between the procuring entities and the Procurement Unit in the Ministry of Finance. This would allow the Procurement Unit to use the data for decision-making purposes.



## Indicator 7. Public procurement is embedded in an effective information system

The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

Anguilla's public procurement system does not have an information system or information policy; therefore, none of the assessment criteria in this indicator were met. E-Procurement systems are not used and there is no strategy to manage procurement data.

### Findings

No information system for procurement has been developed. Regulations include the obligation to publish some documents of the procurement process, but there is no policy to develop an information system. As a consequence, there is no complete information relating to the procurement process. The procurement cycle is not completely covered. Public procurement procedures are not conducted electronically.

E-Procurement and data analysis are not covered either. Regarding data or information analysis, the legal framework includes an obligation to gather some data about the procurement process but does not define clear procedures to analyse that information.

### Substantive gaps

The gaps in this indicator are substantive: Anguilla does not have an information system for public procurement. The information that the authorities do publish is not complete; accessing it is difficult. E-Procurement tools are absent as well. Information technology is not being used to support procurement process. There is no strategy to manage procurement data. There is no usage of the information that the system produces to support its own development.

This broad gap is particularly concerning as it results in a substantive lack of transparency, which has ripple effects for the accountability and quality of public procurement in Anguilla, for example as interested citizens are not able to monitor the adequate spending of public funds through public procurement. In addition, valuable evidence for procurement decision-making – both with regards operations and with regards to policies – is not collected and used. As this situation might impact the achievement of basic public procurement goals. This indicator has been assigned a red flag and classified as high risk.

Due to the absence of an e-Procurement system, it was not possible to evaluate any of the quantitative assessment criteria.

### Recommendations

The main recommendation is to define a responsible entity to plan the development of a comprehensive information system for public procurement. This could include an open procurement policy to gather and use information of procurement procedures, the development of e-Procurement tools and the definition of a strategy to analyse and use procurement data.



## Indicator 8. The public procurement system has a strong capacity to develop and improve

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. It evaluates the existence of strategies and programs for development and the professionalization of the activity. The indicator is divided in three sub-indicators.

Anguilla's public procurement system does not comply with most of the assessment criteria in this indicator: training, advice and assistance are available to only very limited extent; procurement is not professionalised. There is no performance monitoring.

### Findings

The three main aspects of this indicator are largely absent in Anguilla: There is no training programme or a support structure for procurement officers. Assessors did not identify any performance monitoring system. Finally, there is no professionalization of the procurement function. Specific provisions to recognise procurement as specific function are absent, as are evaluation mechanisms, a career path or role descriptions.

The Procurement Unit provides ad hoc guidance and support for procuring entities, but no strategic approach exists. The Procurement Unit also used available information to acquire a general overview of performance, but the absence of a system to manage procurement information renders performance monitoring impossible.

### Substantive gaps

Major gaps relate to the absence of a system of training, advice and assistance for procuring officers. There are no extensive training and evaluation procedures for procurement officers and no other support systems are developed. Another gap is the absence of procedures to use the monitoring of the procurement system as a mean to develop the system itself.

Given that these two elements might fundamentally impact the achievement of basic public procurement goals, a red flag is assigned to sub-indicator 8(a) and (c) and these gaps are classified as high risk. In order to maximise the performance of procurers, it is vital to offer opportunities to develop their skills and knowledge related to public procurement. Targeted training is essential for developing the capacity of procurers. In addition, support services that provide guidance can complement training efforts on an ad hoc basis and commensurate to the concrete needs in the management of a public procurement process. In order to apply these capacity building efforts as well as any policy changes with the best possible results, it is necessary to gather and analyse information about the performance of the system, which is why it is important to adopt a monitoring system.

### Recommendations

Anguilla could start embarking on a strategic approach to procurement capacity and its development. This could be a particularly timely measure in light of the recently (2016) adopted public procurement regulation, whose implementation could be supported by capacity building efforts. In addition, professionalization and monitoring of performance is key to increasing basic objectives of public



procurement. Activities in this area could be structured in a strategic action plan, prioritising the different elements that could include the following:

- A needs analysis could be the starting point for further efforts, clarifying what elements procurers need most.
- Developing a monitoring procedure to drive improvements of the system and gathering the necessary information to conduct the performance analysis is central.
- A training program could be developed, including an evaluation system and an advisory service system to support procuring entities and suppliers.
- A career path for procuring office towards the professionalization of the procuring function could be designed.

### 3.3. Pillar III - Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

Anguilla's procurement institutions, notably the Procurement Unit, functions as prescribed in the law. The Procurement Unit lacks contract implementation and amendment information. Bulk purchases are being organised for several common items utilising a process carried out by the Department of IT and e-government services.

In the context of a small island, the private sector is fairly competitive and organised. Companies are willing to participate in the public procurement market; they do not face major constraints for participation.

The most important challenges identified relate to the planning stage, as market analyses are not carried out nor documented. Involvement of external stakeholders in the procurement system remains low; no formal fora for dialogue with the private sector exist.

#### Indicator 9. Public procurement practices achieve stated objectives.

The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

Under a functioning Procurement Unit, Anguilla is in general obtaining the objectives it seeks through public procurement. The main gaps identified for this indicator relate to procurement planning, involvement of relevant stakeholders and record keeping and statistics.

#### Findings



The Chief Procurement Officer provided the assessors digital files of tender documents of a small sample of processes including consultancies and public works.

The requiring entity prepares these documents. Most procuring entities use templates developed by the Procurement Unit where they exist. The planning of the procurement process is not documented in these documents. Procuring entities do not engage with suppliers before starting the tender process, as procurement officials would be required to disqualify suppliers that provide information, including prices.

The procurement documentation for the analysed procedures included:

- a clear definition of requirements and desired outcomes of contracts;
- a draft of the contract;
- a clear explanation of the evaluation criteria, including non-price criteria such as quality.
- concrete scoring rules

Although there are at present no sustainability criteria in the documents, this issue is now under study by the Procurement Office who plans to liaise with the environment and gender divisions to include related considerations in public procurement.

The tender documents clearly specify procedures. Corresponding dates and times are announced in the invitations to tender published in the local newspaper and broadcast through the radio station. Bidders and the general public are allowed to attend the opening of bids and this is explicit in the tender documents. Contract awards are communicated in writing to the winning supplier, but not announced to the public in general. The Public Procurement Regulations provide the possibility (but not the obligation) for the Chief Procurement Officer to notify and debrief unsuccessful bidders and publish the award online.

There is evidence from the tenders analysed that the procurement methods specified in the PCAA are followed. From the interviews with the procuring entities, there is a clear understanding of the procurement methods and corresponding thresholds. Legislation and contract documents specify provisions that ensure confidentiality during the evaluation and award process. There were no concerns raised during the fact-finding mission about breaches to confidentiality.

Procuring entities interviewed confirmed that general procurement processes are carried out in less than three months, which, compared to other countries, is a good standard. The process is perceived as effective, efficient and transparent, and compliant to legislation and regulation. Complaints are not usual because of these issues.

Contracts are in general signed and implemented soon after they are awarded, because contract clauses are included in the tender documents. The only delays perceived by procuring entities relate to the setting of particular conditions when using FIDIC templates.

Procurement of public works is always carried out by or with the support of the technicians of the Ministry of Infrastructure and Public Works. Statutory bodies, which are not subject to the Procurement and Contract Administration Act, use their own documents and do not use the templates of the Procurement Office.

Pre-qualification is seldom used, but is a possible avenue (e.g., for a complex contract for the Anguilla Community College under CDB rules.)



Bulk purchases have been used for items such as ink cartridges, monitors, and firewall software systems, among others, which have brought advantages such as standardisation of equipment throughout the government. The Department of IT and E-Government Services has been responsible for carrying out these processes. Physical items are stored in the stock of the department and supplied when needed to the requiring agency, which may even be a statutory body. Inventory costs and associated risks are allocated entirely to government.

According to the procuring entities interviewed, the Procurement Committee within the entity requesting the good or service conducts contract management. A project manager is assigned to oversee that the goods or services contracted are properly delivered. This project manager is sometimes external to the entity, in cases of large projects or if funding comes from external institutions. He or she has to certify that the goods or services have been delivered for payment to be made. The requiring department then asks the Treasury to pay. Two officers at the Treasury review the invoice and send it to the cashier to pay by check. Procuring entities receive few complaints about delays in payments.

The Chief Procurement Officer stated during the fact-finding mission that the procuring entities draft and implement contract amendments. According to these entities, amendments are reviewed and issued on time before the new activities begin.

The Procurement Committee is responsible for documenting the procurement process and keeping an ordered file for each one. They are instructed to send all information to Chief Procurement Officer. In practice, nevertheless, the Chief Procurement Officer does not have the complete information and documents of all procurement processes of the central government, especially those which relate to signed contracts, reports of contract implementation, payments and amendments. Statistics are not readily available. Not all procurement information is centrally collected by the Chief Procurement Officer. Furthermore, records are not easily accessible under a single file. This issue was flagged in the last internal audit of the Procurement Unit, which identified errors in record keeping.

There is no direct involvement of relevant stakeholders in public procurement, except for the planning phase of public works. In the context of a small island, according to members of the Procurement Board, interested citizens reach out directly to the government officials in charge of the process to express their concerns or ideas about these processes.

### **Substantive gaps**

The main gaps identified for indicator 9 are related to planning, involvement of relevant stakeholders and record keeping and statistics.

Market research through the engagement with possible suppliers is not carried out. Tender documents do not include evidence of needs analysis, including the possibility of using sustainability criteria, and incentives for exceeding defined performance levels or disincentives for poor performance. Planning, market research and engagement of suppliers in this stage is central for ensuring an effective and efficient outcome of a public procurement procedure and this gap was therefore classified as high risk.

Opportunities for direct involvement of relevant external stakeholders in public procurement are not utilised, except during the planning stage of public works processes. Contract awards are not disclosed to the general public or to participating suppliers. Generally, only the awarded supplier is informed. Providing information for the general public and involving the public in procurement procedures has a





multitude of beneficial effects on the individual procurement as well as the overall governance system. Corrective actions can improve procurements if citizens can share concerns at an early stage. Trust levels are seen to increase where information is made public. This gap was classified as medium risk.

Information to calculate quantitative indicators was not provided to the assessors, nor samples of contracts. Procurement statistics are not available and there is no system in place to measure and improve procurement practices. One reason for this is the sub-optimal record keeping, which was flagged by the last procurement audit conducted by the internal auditors and has not been corrected. Procurement information and files are kept at each procuring entity, such as the contract, contract management and payment documents and contract amendments; these files are not shared with the Procurement Office and are therefore not centrally available. This gap was classified as high risk.

### **Recommendations**

Anguilla could consider improving the planning of procurement processes carried out by its procuring entities. To do this, it would be vital to increase engagement with suppliers before the start of the tender, under equal and fair treatment. This would serve to understand the market's structure, offer and capacity. This process could be documented clearly. The Procurement Office could analyse the possibility of carrying out specific training on how to properly conduct market studies to identify procurement strategies. Market studies also serve to understand if sustainable criteria can be included in the process.

Framework agreements could be implemented, as procuring entities are used already to acquiring certain goods through the bulk purchases conducted by the Department of IT and e-government services. In these agreements, the costs and risks of inventory could be transferred to the suppliers, which have the expertise to deal with them. The entities would acquire goods placing purchase orders to a set of defined suppliers.

Anguilla could analyse the possibility of amending current legislation to have a more open procurement process allowing the involvement of stakeholders in several stages. For example, contract awards could be disclosed to the public in general.

A procedure could be established so that procuring entities inform the Procurement Office about certain contract milestones and dates, as well as send certain documents, like the contract and its amendments, along with the needs analysis, payment and contract implementation reports. Within the Procurement Office, record keeping could be improved to access information related to a specific process in a more accessible way, summarizing basic information in an electronic file for easier calculation of procurement statistics that would help guide decisions to improve the public procurement system.

### **Indicator 10. The public procurement market is fully functional**

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.



Keeping in mind its characteristics and challenges as a small island (both population- and demand-wise), and the difficulties of its shallow port, Anguilla's procurement market is functional. This is especially true with regards to the programmes that target suppliers to create an environment of participation. Gaps persist because of the lack of dialogue mechanisms with the private sector and the absence of strategies for key sectors.

## **Findings**

Suppliers were invited to comment on the amendment to the Procurement and Contract Administration Act. According to the Chief Procurement Officer, very few suppliers submitted comments. In the context of a small island, comments are usually made at informal gatherings. Other instances of dialogue have not been set up, and suppliers have not been invited to comment other regulations or manuals.

The Procurement Office understands the importance of engaging with the private sector and improving their skills to respond to solicitations. It conducted training sessions for suppliers in 2015 and 2016 on topics that were identified as issues by the procurement officers. These included a review of legislations and procedures; how to answer to tenders; and how to estimate quantities and prices to bid properly. In addition, during the fact-finding mission, the assessors evidenced an advertisement in the local newspaper with tips for suppliers on how to answer adequately to tenders, explaining the general structure of standard documents, and providing a point of contact of the Procurement Office. Other programmes dedicated to suppliers are carried out by the Small Business Unit in Anguilla's government, which provides grants to SMEs, albeit not specifically targeted to procurement.

The Procurement Office has recently tried to complete a registry of suppliers. Suppliers may register by paying an annual fee of XCD 150. Paying this fee gives suppliers the right to receive by email business opportunities with the government. However, according to the Chief Procurement Officer, only 10 suppliers have completed the registration process. The cost and the fact that unregistered suppliers still receive invitations, does not create an incentive for registration. Other institutions, like the Ministry of Infrastructure and Public Works have their own lists of suppliers they usually invite.

Suppliers in Anguilla are in general willing to participate in the public procurement market. There are private sector organisations like the chamber of commerce. Some degree of informality exists. Some suppliers are not participating because they carry out their activities without the necessary business license and are thus not entitled to be government suppliers. Public entities perceive that the number of local suppliers is enough for the tenders they procure in the island, especially for small infrastructure.

No serious constraints for local suppliers were identified. Public officials affirm that foreign suppliers may be deterred from participating because of the cost and process of sending bids by regular mail and difficulties to reach the island with their products and services, due to the shallow port and the small quantities that are usually ordered.

Health, education and public works are the sectors that are more important for the administration of Anguilla. Nevertheless, no formal document has been drafted to study them in a procurement context.

## **Substantive gaps**

No open, regular dialogue mechanisms between the Government of Anguilla and the private sector are established, especially for receiving comments and feedback about changes to the public procurement



market. Such an open dialogue would enable the government to better understand the effects of their actions on an important participant in public procurement, and allow the government to react accordingly.

Key sectors have not been identified in formal documents to set up procurement strategies targeted specifically to each of these. Thus, risks and opportunities associated to these sectors have not been assessed.

These two elements constitute substantive gaps and were classified as medium risks.

### **Recommendations**

It is important to establish dialogue mechanisms between the public and the private sectors when changes to the public procurement system are planned. This could be linked to the register of suppliers, inviting those suppliers who have expressed interest in business opportunities with the government. For this mechanism to be really useful, the register could be expanded by making it free for suppliers and providing them not only with information of upcoming tenders, but also tips and access to training. Furthermore, the Procurement Office could try to consolidate in the register the lists of suppliers that individual entities have, to map the supplier base in the island.

In order to identify the best strategies for the most important categories, the Procurement Office in conjunction with the corresponding institutions, could develop studies for some sectors like health and public works, to understand the risks and opportunities that they entail.

## **3.4. Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System**

Pillar IV includes four indicators that are considered necessary for a system to operate with integrity that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and that has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

While stakeholder engagement in public procurement processes is generally permitted, this engagement rarely takes place in practice since no interested civil society organisations or fora for dialogue exist.

Anguilla's audit system is relatively compliant. Gaps remain with regards to missing specifications in some areas, such as timeframes or internal audit. Anguilla has mechanisms for challenges and appeals in place, but the administrative procedure under the responsibility of the Procurement Ombudsman has never been used. Remedies are not possible.

Anguilla's anti-corruption framework covers some vital functions, such as provisions, prevention of conflict of interest, and a debarment procedure. Gaps relate to reporting and training.



## Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fair, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: *i)* disclosure of information and *ii)* direct engagement of civil society through participation, monitoring and oversight.

The small population of Anguilla allows for direct interaction between citizens and officials. Nevertheless, gaps were identified for this indicator because this direct interaction is not being utilised extensively in the context of procurement; the lack of formal dialogue mechanisms between government and civil society; and the confidentiality or unavailability of procurement documents necessary to audit and monitor procurements.

### Findings

In the context of a small island, it is easy for citizens to speak directly with the public officials in charge of public procurement. There are no civil society organisations that carry out oversight or monitoring of procurement. No adequate spaces for a dialogue between the government and civil society have been set up.

The Procurement Office announces procurement notices in the local newspaper and via radio. These mechanisms are effective in the island to reach interested local suppliers. The tender documents are not available online. The interested suppliers must pay a small amount to get access to them. The Procurement Office also holds pre-bid meetings to explain the procurement process to interested parties.

The 2016 Public Procurement Regulations state that the Chief Procurement Officer must open the non-confidential bids, proposals or applications to prequalify in a public manner. Although there is no prohibition, there are no other explicit legal or regulatory provisions that allow for citizen participation in other phases of the procurement process. Participation is informal. Citizens formulate questions or provide comments contacting directly the public officers or even the concerned minister, or meeting with him or her directly.

Consultations for public works is not mandated by law but done in practice. Citizens and suppliers are invited to town hall meetings to discuss aspects such as possible locations of infrastructure and issues with land and relocation.

Soft copies of files are kept by the Procurement Office and these remain mostly confidential. There are thus few opportunities for external stakeholders to participate directly in the procurement processes.

### Substantive gaps

This indicator shows substantive gaps when compared to the assessment criteria. There is no evidence that regular consultation is being carried out when formulating reform to the public procurement system, like the 2016 amendment to the procurement legislation. The Government of Anguilla has not set up any programmes to build capacity of relevant stakeholders to understand and improve public procurement.



The legal and regulatory framework does not have provisions for citizen participation in stages other than bid opening. Furthermore, as many documents are confidential or not available for free to all stakeholders, citizen engagement is difficult.

Consultation, observation and monitoring by citizens do not occur regularly in procurement processes, except for some exceptions of processes of public works, especially during the planning stage.

As mentioned in previous indicators, increasing the transparency of public procurement and encouraging participation of the public can have beneficial results for the effectiveness and efficiency of public procurement. Involving citizens in the public procurement cycle can ensure a closer alignment with needs. Overall, trust in public institutions is strengthened through increased transparency.

Given the small island context and the accessibility of public officials, these gaps were classified as medium risk.

### **Recommendations**

The Procurement Unit could consider establishing meetings with citizens to inform them on basic aspects of public procurement for consultation and monitoring. Meetings could be held every time a change to the public procurement legislative or regulatory framework are planned and could be invited by advertising in the newspaper and radio, inviting not only suppliers but also general citizens.

Legal reforms could be considered to include provisions for citizen participation in all stages of procurement. Participation could be boosted by having the files available for download from a webpage, free for all users, including tender documents.

## **Indicator 12. The country has effective control and audit systems**

The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, “effectiveness” means the expediency and thoroughness of the implementation of auditors’ recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

Gaps were identified for this indicator related to the coordination of controls and audits of public procurement, the enforcement and follow-up of findings and recommendations, and the absence of proper operating institutions like a Supreme Audit Institution (SAI) and the Public Accounts Committee.

### **Findings**

The main piece of legislation governing the control framework is the Financial Administration and Audit Act. The Chief Auditor has full autonomy and is not subject to the direction or control of any person or authority. He may be a foreign person or institution. Recently this post was appointed to the Wales Audit Office. The Anguilla Framework for Fiscal Sustainability and Development states that audit reports for the Government of Anguilla and statutory bodies and government companies must be provided to the United Kingdom on an annual basis.



Anguilla does not have a SAI, according to the 2014 PEFA report. According to the Financial Administration and Audit Act, the Chief Auditor must carry out the necessary checks to analyse whether a government department has used its resources with economy, efficiency and effectiveness. This is related to the oversight of the procurement function, and further strengthened by the risk assessment carried out through internal audit.

The legislation specifies the handling of audit reports. For external audit, the Public Accounts Committee was established in 2011 and had not reviewed external audit reports, until 2016, when the first “inquiry report” on issues raised in 2013 was drafted.

There is no legislation related to internal audit; according the 2014 PEFA report, an act had been drafted but not been adopted. In lieu, an Internal Audit Manual specifies appropriate mechanisms of oversight, in line with international best practices and applicable to all audits, including the ones done specifically about procurement.

There is no timeframe to implement recommendations established in legislation.

Internal audits seldom take into account procurement matters. In 2016, the Procurement Office was audited and a work plan was drafted. Some of the issues identified remain to be improved. Statutory bodies contract external audit firms, but several of them have not had recent audits.

Auditors interviewed during the fact-finding mission affirmed that training is conducted regularly, including from the Caribbean Regional Technical Assistance Centre (CARTAC). However, due to austerity measures implemented after Hurricane Irma hit the island, other training activity has decreased. Procurement topics are not explicitly included in the training programme.

The selection of auditors follows the same procedures as for any civil servant.

### **Substantive gaps**

The Public Accounts Committee, in charge of reviewing external audit reports, does not seem to carry out this task as intended. There is no systematic formal response to recommendations, nor timeframes established for implementing the recommendations. These topics might impede achieving the goals of public procurement in Anguilla and as they cannot be mitigated directly or indirectly, constitute a red flag for sub-indicator 12(a) and was classified as high risk. Anguilla does not have an SAI, as was identified in the last PEFA report. According to the MAPS assessment criteria, this constitutes a substantive gap. However, given the context, institutionalising the function of oversight might be too costly and cumbersome and the gap was classified as medium.

The country lacks legislation on internal audit. There is no specific mention to the oversight of procurement in the internal audit procedures nor in training for auditors. Adding such rules can establish clear expectation and create increased accountability for public procurement procedures. This gap was classified as medium.

Although audits are being contracted for statutory bodies, several have not undergone recent audits. This gap was classified as medium.

### **Recommendations**



To complete the external audit exercise, reviews of the audits carried out by this institution or by the Chief Auditor could be undertaken by the Public Accounts Committee in the legislative branch. This review could be annual, and apply to all institutions. A specific timeframe and work plan could be drafted to implement recommendations. Anguilla could review the need to establish a formal SAI within the country, focusing rather on the question how the function of an SAI can be sufficiently established and whether current arrangement fulfil needs in this regards.

With regards to internal audit, the written procedures could be further strengthened by means of updating the Internal Audit Manual to include procedures related to the oversight of procurement. In addition, legislation could include the principles of internal audit, comprising follow-up mechanisms and also have specific provisions for procurement oversight and for enforcing audit for all public entities including statutory bodies.

Finally, Anguilla could consider including in the regular training for auditors specific modules on audit of procurement, emphasising the importance of this matter for a sound audit procedure.

### **Indicator 13. Procurement appeals mechanisms are effective and efficient**

Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

Anguilla has appeals mechanisms in place in legislation, but red flags must be raised because these are not in use and do not conclude in timely remedies for the procurement processes.

#### **Findings**

Anguilla has in place administrative and judicial review mechanisms.

The administrative mechanism is established in Section 44 of the Procurement and Contract Administration Act, which states the function of the Procurement Ombudsman, who is to be appointed by the Governor in Council, at the request of the Minister. The main function of the Procurement Ombudsman is to investigate a complaint in relation to an award of a contract. The ombudsman is limited to investigate cases after the contract has been awarded.

The Ombudsman is not a permanent institution, but to be appointed ad hoc by the Governor in Council, at the request of the Minister, in cases of complaints. There are no specified timeframes for the appointment or issuing of decisions of the Procurement Ombudsman, nor procedures to reach a decision from this person, which do not include remedies. There is no administrative body specified in the legislation to appeal decisions of the Procurement Ombudsman. According to the Chief Procurement Officer, the Procurement Ombudsman has never been appointed as there have not been any complaints related to procurement processes.

The judicial mechanism begins at the High Court of Justice. The Court of Appeal of the Eastern Caribbean Supreme Court handles appeals. The final court of appeal is the JCPC. These courts are not involved in the



procurement process. The assessors identified a case in the High Court but no cases in the instances of appeal.

The Anguilla legislation establishes fees for several proceedings, in the following norms: Courts of Justice Fees Act, 2016; Magistrate Court Fees Regulations, 2016; High Court Fees (Civil, Admiralty and Other Proceedings) Regulations, 2016. For the JCPC cases, the Appendix to the Judicial Committee (Appellate Jurisdiction) Rules 2009 and the Practice Directions establish fees for this body.

Procedures of the judiciary are clear, decisions are binding to all parties and the courts appear to be functioning and be adequately staffed. JCPC is deemed to be unbiased and its decisions are published online. Section 48 of the Public Procurement and Contract Administration Act establishes a limitation on court proceedings related to ordering remedies other than award damages.

### **Substantive gaps**

The Procurement Ombudsman has never been appointed, as there have been no cases of administrative challenges or complaints. Suppliers prefer lodging their complaints directly with the judiciary. Judges that do not reside in Anguilla carry out the appeals procedure in the judiciary. Therefore, they are thought to be free from those conflicts of interest that arise frequently in a small island context, where many people are related to each other. Suppliers think that the decision of the Procurement Ombudsman would not be unbiased. This is emphasised by the fact that the Procurement and Contract Administration Act allows a person involved in the procurement process to be appointed as Procurement Ombudsman for that process. This was classified as a medium risk.

No procedures nor timeframes for issuing decisions from the Procurement Ombudsman are established. This would be important to ensure that appeals procedures are conducted timely, ensuring suppliers that their concerns are treated adequately. Furthermore, there is no administrative body specified in the legislation to appeal decisions of the Procurement Ombudsman. Establishing a hierarchy tasked with reviewing the decision of the Ombudsman is important to maintain checks and balances. It would also reassure suppliers and the administration that appeals are handled with due process. This was classified as a medium risk.

Neither the administrative nor the judicial procedures are structured in a way that would allow the appeals decision to be reached before the contract award. It would be important to reach the appeals decision before the award, in order not to anticipate the decision of the procurement process. No remedies are possible. This, however, means that supplier do not have an incentive to use the appeals procedure. This could significantly impede the main goals of public procurement and cannot be mitigated directly, and thus constitutes a red flag and was classified as a high risk.

### **Recommendations**

Anguilla could consider revising the current legislation regarding the Procurement Ombudsman. Improvements to be considered are the following: establish the possibility of reviewing processes before the award of the contract which could result in remedies; define a procedure for appointing the Ombudsman in a way that ensures that this person is not involved in any way in the procurement process and that possible conflicts of interest are disclosed and treated; set a procedure and timeframes for the Ombudsman to make a decision; and create an appeals mechanism for the decisions that the Ombudsman





makes. Alternatively, the country could analyse if some of these aspects may be enforced via regulation, which might be simpler to implement.

## Indicator 14. The country has ethics and anti-corruption measures in place

This indicator assesses *i)* the nature and scope of anti-corruption provisions in the procurement system and *ii)* how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

Several red flags are raised for this indicator because of the serious gaps related to issues that lie outside of the procurement sphere and which cannot be mitigated, such as the absence of the following: civil society institutions for monitoring and auditing contracts, definitions of penalties for unethical behaviour, a complete anti-corruption framework and secure mechanisms for reporting prohibited practices.

### Findings

With respect to anti-corruption legislation, the United Nations Convention against Corruption has not been extended to Anguilla. The UK Bribery Act 2010 which includes comprehensive definitions related to bribery applies to British citizens including in the Territories. The General Orders and the Criminal Code specify disciplinary and criminal consequences for corruption and related prohibited practices. Finally, the Procurement and Contract Administration Act has provisions in Section 3 regarding ethical behaviour, including the prohibition of accepting inappropriate gifts or hospitality when dealing with bidders and suppliers; and the Public Procurement Procedures Manual clearly defines practices such as corruption, fraud, collusion, coercion and obstruction.

There are defined activities and procedures for penalising corruption. As defined in the General Orders, disciplinary procedures against public officers may be initiated by Heads of Department, Permanent Secretaries and the Governor who must report the case to the Public Service Commission. In case the disciplinary matters also constitute a criminal offence, the corresponding Permanent Secretary must be informed, so that he in turn refers the case to the Attorney General and the Police.

The standard procurement documents drafted by the Procurement Unit include a section on Probity of the Bid Process, which includes a declaration that must be filled out by bidders about collusive bidding. These templates also state that participating suppliers must also inform of possible conflicts of interest when presenting a bid. Documents examined which do not follow these templates also include provisions related to collusion in the Letter of Intent that suppliers must submit along with their bid.

Referring to conflicts of interest, the 2016 amendment to the Public Procurement and Contract Administration Act included a provision for the case when a member of the Board, or one of his relatives, has a financial interest in a procurement that is being discussed. Before the matter is considered by the Board, the person affected by the conflict must disclose it, withdraw from the meeting and refrain from taking part in discussion or voting on the matter. Further provisions related to conflicts of interest are established in the Public Procurement Procedures Manual.

Part 5 of the Procurement and Contract Administration Act provides for a system for suspension and debarment, which includes an appeals procedure to ensure due process. According to the members of



the Procurement Board interviewed as part of the assessment, there have been no cases of suspension or debarment since the enactment of this act.

As was mentioned in indicator 11, there are no civil society organisations focussing on monitoring and auditing procurement processes and contracts. No channels for reporting prohibited practices exist.

Finally, there is a general Code of Ethics with provisions related to honesty and integrity and a specific Public Procurement and Contract Administration Code of Ethics and Policy Document, mandatory to all public officers involved in procurement

### **Substantive gaps**

Anguilla's current legislation does not define the consequences of breaches to the ethical behaviour defined in the Procurement and Contract Administration Act. No obligation is established to report general allegations on prohibited practices except for bribes and gifts specified in the General Orders. In addition, these do not establish a procedure for doing so.

Although public officers are obliged to disclose financial interest in procurement being carried out, there is no cooling-off period for former public officials.

Despite implemented to some extent by the Procurement Office in the templates developed, there is no mention in legislation or regulation establishing precise instructions on how to incorporate provisions on prohibited practices in procurement documents. The provisions included in these templates only related to collusive bidding. Other prohibited practices are not addressed. Such provisions can be helpful to ensure that procurement procedures and their documents take adequate account of corruption prevention.

Anguilla does not have a complete anti-corruption framework, especially to prevent and detect corruption in government, nor any agencies carrying out those tasks. This constitutes a substantive gap. As no statistics on corruption-related legal proceedings and convictions are compiled, there is no evidence that laws on prohibited practices are being enforced by applying penalties, nor that mechanisms for identifying corruption risks are being used. Training on integrity, the code of ethics or financial disclosure mechanisms is not provided to public officials.

As was mentioned in indicator 11, there are no civil society organisations focussing on monitoring and auditing procurement processes and contracts. Such an involvement is important to establish accountability that enables lawful public procurement. Anguilla has no dialogue mechanisms with citizens or proper and adequate channels for reporting prohibited practices, nor provisions to protect whistle-blowers. Such mechanisms to facilitate reporting and whistleblowing are important to ensure that wrongdoing is detected, receives follow up, and that whistle-blowers do not face detrimental consequences.

The lack of civil society organisations able to monitor and audit procurement and the serious gaps that lie outside of the procurement sphere translate into a red flag for this indicator.

There are no established consequences in case of breach of the Public Procurement and Contract Administration Code of Ethics.

These gaps were classified as high risk.



## Recommendations

Anguilla could consider making the necessary arrangements with the United Kingdom to extend the United Nations Convention against Corruption to the island, to have a clear international commitment for public integrity. Other legal reforms could be evaluated, to establish clear consequences for officials and other persons that breach ethical behaviour, especially related to procurement. This could be complemented by defining procedures to report allegations regarding prohibited practices, cooling-off periods for former public officials, and rules for including complete provisions on prohibited practices in tender documents.

The Procurement Office could update the templates of tender and contract documents to include a variety of provisions about prohibited practices and enforce its use by all agencies. It could also seek to establish consequences for breaching the Public Procurement and Contract Administration Code of Ethics.

Finally, training for public officials in charge of procurement could include integrity aspects, as well as specific instructions related to addressing conflicts of interest, the Public Procurement and Contract Administration Code of Ethics and financial disclosure. This training could include the importance of reporting allegations on prohibited practices, even if this is not mandated currently by legislation.

## 4. Consolidated Recommendations

Pillar I			
Grant suppliers a right to lodge complaints and appeal decisions made during the procurement process.	Establish rules for contract management, including amendments, payments, fines for non-compliance and in general conflict management during contract performance.	Incorporate sustainable development and Anguilla's international commitments in the public procurement regulation.	Provide for rules and guidelines for safekeeping records.
Pillar II			
Refine the feedback mechanism for budget execution, to increase visibility about how and whether public funds are adequately spent.	Evaluate the possibility to institutionalise centralised purchasing.	Design and adopt an e-procurement strategy.	Train procurement officials on market engagement and analysis.
Pillar III			
Enforce a mechanism for procuring entities to inform the	Promote the use of a free supplier register and use it to engage		



Procurement Unit about contract implementation.	suppliers in a dialogue with the Procurement Unit.		
<b>Pillar IV</b>			
Raise awareness with citizens on basic aspects of procurement.	Establish a Supreme Audit Institution and enforce the review of audit reports by the Public Accounts Committee.	Improve the administrative challenge procedure to enable remedies.	Create a code of conduct and train officials on integrity topics.

While Anguilla has undertaken major legal reforms in recent years, further changes to the legal and regulatory framework are suggested by several MAPS indicators across all pillars. Recommendations relate to the addition of detailed provisions for managing the public procurement cycle. In addition, rules could be included in the PPCAA to establish security procedures for the area of public procurement, both at a physical and electronic level. A set of provisions covering contract management could be part of the public procurement act. Additional provisions could be included to clearly assign several responsibilities related to aspects of public procurement, such as monitoring and reporting.

The Government of Anguilla could evaluate the need to include a reference to sustainable public procurement and / or sustainable development in the legal framework. This could include an analysis of how public procurement processes can be changed to favour performance. This could include centralisation initiatives or increased transparency. In addition, the government could identify obligations derived from international instruments that have a bearing on public procurement. Anguilla could consider revising the current legislation regarding the Procurement Ombudsman to streamline processes and make them attractive to suppliers.

Aside from legal changes, Anguilla could consider improvements to tools and guidance material. Available support tools could be expanded, linked to the formal issuance of the draft of the Public Procurement Procedures Manual. This could include model procurement documents, and standard contracts and clauses. Existing tools could be regularly updated. Particular attention in updating procedures and guidance material could be paid to financial management procedures and internal audit.

The Government of Anguilla could consider developing a strategy to adopt a comprehensive information system for public procurement, including e-procurement. E-procurement can offer considerable gains in the area of efficiency and effectiveness, particularly in contexts with low human capacity. Such an e-procurement strategy could include a more comprehensive approach to information management, data gathering and evidence-based performance monitoring, as well as efforts to make procurement information more transparent.

Increasing transparency of public procurement can have benefits throughout Anguilla’s public procurement system. Transparency has different dimensions and includes efforts such as making information and decision making processes more accessible and participatory.

Aside from improving the legal and regulatory framework, Anguilla could aim at improving the performance of procurement processes as such. This could include analysis of the challenges in managing public procurement processes and targeted measures accordingly, such as additional guidance and



training. Areas identified by the MAPS that require increased attention include the planning phase, as well as contract management and strategies for specific sectors that are associated with increased risk.

A strategic approach to capacity development of the procurement function could support efforts to increase the performance of the procurement system in Anguilla. A responsible authority for creating this capacity building strategy could be determined as a first step; elements to be developed over the longer term range from a needs analysis, to a monitoring procedure, training programme and career path. Training for public officials in charge of procurement could include integrity aspects.

The Government of Anguilla could evaluate the possibility to institutionalise a centralised purchasing system for standardised goods, works and services that are that are repeatedly procured by several procuring entities. Different avenues to increased centralisation could be taken, such as increasingly offering centralised purchasing options or a comprehensive policy for centralisation.

Several recommendations for Anguilla aim at improving integrity and accountability of the public procurement system, yet are placed outside of public procurement system in the strict sense. Anguilla could consider establishing a formal SAI within the country. Additional measures to support the audit framework include involving the Public Accounts Committee in audits of public procurement. Aside from revisions to the legal framework to strengthen anti-corruption provisions, procedures could be defined to facilitate ethical behaviour, such as reporting mechanisms, cooling off periods for former public officials and the development of a code of conduct.

## 5. Information regarding Validation

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The first draft of the report was shared with the assessment focal points in all five states in September 2018. A workshop, both individually with the countries and as a group, was held in September 2018 in Washington, DC, in the margins of the annual meeting of the Inter-American Network on Government Procurement. This workshop served to discuss findings in advance of the formal submission of written comments. A second draft, incorporating comments from the countries, was shared with the countries and the ITAG in late December 2018. The ITAG have thus far reviewed four of the assessments. Comments from the ITAG were received in January 2019 and incorporated in the draft for publication in March 2019. This draft was shared with the states again, and was accepted to be presented at stakeholder workshops in March 2019.

This assessment was conducted by a MAPS assessment team coordinated by the OECD with the leadership and support from the Procurement Office in the Ministry of Finance in Anguilla, CDB, and academic procurement experts. From Anguilla, the main focal point was Ludiane Leveret-Richardson. At CDB, Douglas Fraser and Johanna Pelaez were tasked with overseeing the assessment. Public procurement experts Maria Margarita Zuleta and Nicolás Penagos conducted background research and compiled the assessment. Paulo Magina and Lena Diesing from the OECD coordinated and finalised the overall assessment. In addition, various individuals in Anguilla – members of the administration, civil society, private sector and media – were open and frank interview partners that made this assessment possible in the first place. A full list of interview partners is provided in the annex to this report.



# Annex I: Source Documents

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The detailed assessment results (i.e. at sub-indicator level using the provided Excel-Sheet) are available in the indicator matrix file.

The documents analysed for this assessment were:

- 1) Public Expenditure and Financial Accountability (PEFA) Performance Assessment 2014
- 2) Anguilla Framework for Fiscal Sustainability and Development
- 3) Confidential Relationships Act
- 4) Evaluation Committee Guidelines
- 5) Financial Administration and Audit Act
- 6) Fiscal Responsibility Act
- 7) Internal Audit Manual
- 8) Public Procurement and Contract Administration Act 2012 and its 2016 Amendment
- 9) Public Procurement Regulations 2016
- 10) Public Procurement Procedures Manual
- 11) Public Procurement and Contract Administration Code of Ethics and Policy Document
- 12) Standard tender documents
- 13) Public Utilities Commission Annual Report 2016



## Annex II: Interviewed Stakeholders

Type of institution	Name of Institution in the country	Persons
<b>Institution in charge of the normative/regulatory function for public procurement</b>	Procurement Unit (Comprises Procurement Board, Procurement Office and Procurement Committees)	Ludiane Leveret-Richardson Nashara Webster-Wilkes Marisa Harding-Hodge
<b>Authorities responsible for budgeting and financial procedures</b>	PS Finance, Budget Unit	Shona Proctor
<b>Public Service Commission</b>	Public Utilities Commission	Ken Banks
<b>Representatives of private sector</b>	Anguilla Chamber of Commerce	Lily Moses
<b>Media.</b>	Radio Anguilla, The Anguillian, Kool FM, Klass FM, UpBeat Radio, The Herald	Farrah Banks
<b>Authorities in charge of internal and external controls and audits</b>	Internal Audit Public Accounts Committee	Andrew Gumbs Palmovan Webster
<b>Selected number of procuring entities including state owned enterprises</b>	<ul style="list-style-type: none"> <li>- MICUH</li> <li>- Ministry of Social Development</li> <li>- Ministry of Home Affairs</li> </ul> Statutory Bodies: <ul style="list-style-type: none"> <li>- Anguilla Development Board</li> <li>- Health Authority of Anguilla</li> <li>- Anguilla Air and Sea Port Authority</li> <li>- Water Corporation of Anguilla</li> </ul>	Karim Hodge Jocelyn Johnson Chanelle Petty  Bernie Sasso Althea Hodge Malcolm Webster Sherman Williams Shomari Kentish Jennifer Gaskin

