



**MAPS**

Methodology for Assessing  
Procurement Systems

# ASSESSMENT OF ANTIGUA AND BARBUDA'S PUBLIC PROCUREMENT SYSTEM

2019



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Procurement Systems

## Antigua and Barbuda

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# Assessment of the Public Procurement system

March 2019

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# Acronyms

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ABLP: Antigua and Barbuda Labour Party

CARICOM: Caribbean Community

CCI: Caribbean Challenge Initiative

CDB - Caribbean Development Bank

DoGA: Directorate of Gender Affairs

ECCB: Eastern Caribbean Central Bank

GDP: Gross Domestic Product

HDI: Human Development Index

JCPC: Judicial Committee of the Privy Council

MTDS: Medium-Term Debt Management Strategy

OECS: Organization of Eastern Caribbean States

ONDCP: Office of National Drug Control and Money Laundering Policy Antigua and Barbuda

QNI: Quality National Index

UPP: United Progressive Party

UNDP: United Nations Development Program

SIDS: Small Island Developing States

XCD: Eastern Caribbean Dollar



# Executive summary

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Antigua and Barbuda has taken first steps to improve its public procurement framework, for example by adopting a new Procurement and Contract Administration Act in 2011. However, these new rules are not enacted and a number of elements of the public procurement system remain behind potential. Relative strengths exist in the area of integrity and accountability, where elements of an anti-corruption framework for public procurement have been put in place.

## **Pillar I**

The legal and regulatory framework in Antigua and Barbuda is characterised by the fact that the most recently adopted Procurement and Contract Administration Act (2011) has not been enacted nor implemented. Public procurement in Antigua and Barbuda is conducted according to the rules detailed in the Tenders Board Act (1991/2002).

While the approved Act does cover many of the assessment criteria in this pillar, the lack of implementation means that most of these provisions remain ineffective. The Procurement and Contract Administration Act touches upon many aspects of the public procurement system, beyond pillar I, such as institutional arrangements. Due to a lack of legal clarity, performance in the procurement system is suffering.

Antigua and Barbuda lacks implementing regulations and tools to support the legal framework. As these instruments are needed to make the legal framework for public procurement operational, this represents a major gap.

Antigua and Barbuda does not make considerations related to sustainability in its public procurement framework. The law does not make considerations of international commitments.

Assessors assigned several red flags in this pillar.

## **Pillar II**

There is no integration between the financial management system and the public procurement system and no provisions as to how processes, appropriations and payments are to be handled. There are no financial procedures defined in the different existing legal instruments. There is no existing requirement for a procurement plan to be prepared in the procuring entities.

The 2011 Procurement and Contract Administration Act establishes and clarifies certain procurement institutions and their responsibilities. However, ambiguity remains as to what kind of institutions are considered as procuring entities. A potential institutional conflict of interest exists in the role of the Procurement Board, as it is both regulator for procurement and responsible for purchasing decisions. The Department of Public Works conducts some centralised procurement ad hoc, but overall, consolidation and aggregation remain limited.

There is no information system supporting public procurement, no training or professionalization activities, and no ability to develop and improve. Requirements to gather information and data are limited to retaining some information, but there are not obligations related to develop and maintain an information system.



Several red flags were raised in this pillar.

### **Pillar III**

Most of the procurement processes in Antigua and Barbuda are being conducted through non-competitive methods by seeking waivers for the obligation to conduct a competitive tender, with limited justification. Public information is scarce. Most documents are confidential. As a result, participation from external stakeholders is limited.

Procurement is conducted “on paper”. The Tenders Board does not have complete records of all processes. Contracts and amendments are handled directly by the procuring entities. Finally, no procurement strategies have been developed for the most important sectors in the public procurement system.

The most important constraint for suppliers to participate in the public procurement market is the serious delay in payments. In addition, there are no fora for dialogue with the private sector, nor training programmes in place for suppliers. Although the Tenders Board has approved a register of previous suppliers. This register is not fully implemented and is not used. Antigua and Barbuda’s public procurement market is not fully functional.

Several red flags were raised in this pillar.

### **Pillar IV**

Stakeholder participation in public procurement is largely absent in Antigua and Barbuda, due to legal constraints and a lack of transparency of procurement information. There are no formal dialogue mechanisms between government and civil society. Procurement documents are confidential.

Antigua and Barbuda has an audit framework in place, but it has considerable gaps with regards to regular implementation. There is no mechanism or provision related to internal control. The Public Accounts Committee is not meeting regularly. The audit office does not have the capacity to undertake all audits that would be required.

While there is a mechanism for challenges and appeals, there is no administrative complaints procedure in place. The 2011 Procurement and Contract Administration Act includes the possibility of a person to file a complaint related to the award of a contract or the procurement process to the Ombudsman.

In relation to anti-corruption measures, Antigua and Barbuda has adopted a legal and regulatory framework and institutions. Antigua and Barbuda has several provisions enacted in legislation related to anti-corruption and prohibited practices. Substantive gaps include the lack of capacity of the Integrity Commission and Public Services Commission, the lack of civil society organisations to monitor procurement and the absence of secure mechanisms for reporting prohibited practices. There is no debarment procedure and suppliers are being excluded from the public procurement system at the discretion of procuring officers. Finally, there are no mechanisms to detect and prevent corruption in procurement, no civil society organisations carrying out contract monitoring and social audit, and no secure and confidential channels for reporting prohibited practices or unethical behaviour.

The assessors assigned several red flags.





## Overview of compliance

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
<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

<b>PILLAR IV</b>	
<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

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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 Antigua and Barbuda. 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 Antigua and Barbuda, using the new MAPS (2018). The assessment was led by the Ministry of Finance and Corporate Governance in Antigua and Barbuda, 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 Antigua and Barbuda'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 Antigua and Barbuda, 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 the Grenadines.



## 2. Analysis of Country Context

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

Antigua and Barbuda is a country consisting of two major inhabited islands (Antigua and Barbuda) and other, smaller ones. It has a total area of 442 km<sup>2</sup>. It gained independence from the United Kingdom on 1 November 1981, but maintains many aspects of the British culture such as English as its official language. Antigua and Barbuda is a member of the Commonwealth of Nations. Its capital is St. John's on the island of Antigua, which has the largest port of the country.

The current population of Antigua and Barbuda is 103,000 based on the latest United Nations estimates. The median age is 30.9 years and 20.9% of the population lives in urban areas. The island of Antigua has about 82,000 residents.<sup>1</sup>

Reviewing the different world indexes, Antigua and Barbuda ranks 56<sup>th</sup> in the 2017 Quality of Nationality Index (QNI), first among the OECS members.<sup>2</sup> In terms of the Human Development Index (HDI), Antigua and Barbuda ranks 62<sup>nd</sup> among 188 countries.<sup>3</sup> In the 2018 Doing Business Ranking, Antigua and Barbuda ranks 107<sup>th</sup>.<sup>4</sup>

The estimated 2017 Gross Domestic Product (GDP) was USD 1.4 billion<sup>5</sup>. Tourism is the main industry in Antigua and Barbuda. According to the World Travel and Tourism Council, the total contribution of travel and tourism to GDP in Antigua and Barbuda was 51.8% in 2017, making it the 8<sup>th</sup> in the world when ranked by this indicator. The total contribution of the tourism industry to employment, including indirect jobs, was 46.1% for the same year.<sup>6</sup> Previously higher numbers were reduced by the negative impact of natural disasters. In September 2017, Hurricane Irma badly hit the island of Barbuda. Almost all buildings on the island were destroyed. The inhabitants were relocated to Antigua; some hundreds have since returned to their homes.

Other industries are investment banking and manufacturing. Some commercial foreign banks, especially from Canada and Britain, have established operations in the country.

Antigua and Barbuda is a parliamentary democracy under a constitutional monarchy. Queen Elizabeth II is head of state and appoints a Governor-General (Sir Rodney Williams). The Prime Minister (Gaston Browne) is the head of government. The Prime Minister advises the Governor-General on the appointment of a Council of Ministers (the "Cabinet"). The Cabinet exercises the executive power.

The central level of government includes 12 ministries, 5 government official offices and 21 statutory bodies. The latter are governed by the 2006 Financial Administration Act (FAA 2006) and their own acts.

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<sup>1</sup> <http://www.worldometers.info/world-population/antigua-and-barbuda-population/> (accessed 24 June 2018)

<sup>2</sup> Quality of Nationality Index, website: <https://www.nationalityindex.com/> (accessed 24 June 2018)

<sup>3</sup> Human Development Index, website: <http://hdr.undp.org/en/content/human-development-index-hdi> (accessed 24 June 2018)

<sup>4</sup> Doing Business Ranking, website: <http://www.doingbusiness.org> (accessed 24 June 2018)

<sup>5</sup> Global Finance, website: <https://www.gfmag.com/global-data/country-data/antigua-and-barbuda-gdp-country-report> (accessed 24 June 2018)

<sup>6</sup> World Travel and Tourism Council, website: <https://www.wttc.org/> (accessed 24 June 2018)



In addition, there is a local government of Barbuda, which consists of the Barbuda Council in charge of the affairs of the island of Barbuda.<sup>7</sup>

The government and the two chambers of the Parliament share legislative power. The parliament has two chambers: the Senate comprises 17 senators appointed by the Governor General; the House of Representatives comprises 17 elected representatives, out of which 15 are members of the Antigua and Barbuda Labour Party (ABLP). The Auditor General reports to Parliament. The Public Accounts Committee of Parliament is responsible for reviewing the Auditor General's reports.

The Antigua and Barbuda judicial branch consists of the Industrial Court and the Magistrates Court for minor offenses and the High Court for major offenses. The High Court is part of the Eastern Caribbean States Supreme Court (ECSSC). The OECS appoints their members. Appeals are taken to the Court of Appeal of the ECSSC. The final court of appeal is the Judicial Committee of the Privy Council (JCPC), located in London.

The Bird family dominated the country's politics in the decades after its independence in 1981. In 2004, the United Progressive Party (UPP), led by Baldwin Spencer, defeated Lester Bird (ABLP) and ended the reign by the Bird family. The current Prime Minister, Gaston Browne, is a member of the ABLP. He won the general elections in 2014 after defeating the ruling UPP.<sup>8</sup>

Antigua and Barbuda faces challenges related to money laundering and fraud. These problems stem from the country's role as an offshore centre with a relatively large financial sector and internet gaming industry. Nevertheless, according to the Antiguan Office of National Drug Control and Money Laundering Policy (ONDCP) the levels of crime have decreased thanks to institutional efforts and their partnerships with international agencies, as can be seen in the conclusions of the ONDCP's latest report, published in 2014.

Antigua and Barbuda fares well on the issue of corruption and transparency. The international advocacy organisation Freedom House<sup>9</sup> rated Antigua and Barbuda in 2016 with a score of 2 on a scale of 1 to 7, where 1 is most free. The main reasons of this score are the completed reforms relating to the following areas:<sup>10</sup>

- An Independent Elections Commission administers elections. In 2015, amendments to the Representation of the People Act were proposed to increase transparency in the campaign finance system.
- Accountability structures have had improvements since 2004, when the government enacted a Freedom of Information Act.
- In April 2015, the legislature abolished criminalisation of defamation. However, similar cybercrimes remain subject to imprisonment or fines under the Electronic Crimes Act of 2013.

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<sup>7</sup> Government of Antigua and Barbuda, website: <https://ab.gov.ag/> (accessed 24 June 2018)

<sup>8</sup> Caribbean Elections, website: [http://www.caribbeanelections.com/knowledge/country\\_browser/ag\\_profile.asp](http://www.caribbeanelections.com/knowledge/country_browser/ag_profile.asp) (accessed 24 June 2018)

<sup>9</sup> Freedom House advocates to advance freedom and democracy, <https://freedomhouse.org/about-us>

<sup>10</sup> Freedom House, website: <https://freedomhouse.org/report/freedom-world/2016/antigua-and-barbuda> (accessed 24 June 2018)



The Constitution guarantees freedom of expression, of beliefs, of association and of assembly. The Freedom of Information Act gives citizens the statutory right to access official documents from public authorities and agencies.

Crime is, in general, low. However, some types of crime have been on the rise in the country, particularly murders.<sup>11</sup> The state actively attempts to combat organised crimes. Most victims report crimes to the police. Citizens generally do not view the police as a source of crime and violence.

The 2005 Equal Opportunity Act bars discrimination based on race, gender, class, political affinity, or place of origin. Nevertheless, challenges remain with regards to gender equality. For example, the proportion of seats held by women in the national parliament was 11.1% in 2018, according to the Inter-Parliamentary Union (IPU). This places Antigua and Barbuda at rank 200 out of 264.<sup>12</sup> Several active civil society organisations are working to reduce the gender gaps.

Universal secondary education was achieved in 2013. The Medium-Term Development Strategy 2016 to 2020 seeks to reduce overcrowding with respect to the provision of secondary education (25% overcapacity) through the construction of new schools and expansions to existing schools.<sup>13</sup>

Since 1997, according to UNDP, the Government of Antigua and Barbuda has accumulated a large level of debt. The government obtained help from the IMF and a concessionary loan of USD 50 million from the Bolivarian Republic of Venezuela.<sup>14</sup> Keeping this in mind, the public debt in 2016 was approximately USD 1.1 billion (XCD 3 billion)<sup>15</sup>, or 86.22% of Antigua and Barbuda's GDP. In 2016, the government applied a Medium-Term Debt Management Strategy (MTDS) tool to implement sound debt management over the medium term (2016-2020).<sup>16</sup> In March 2018, the Prime Minister, Gaston Browne announced that he had instructed the ECCB to make the final payment to the IMF and that the Venezuelan government will write off 50% of the loan through their PetroCaribe oil deal.<sup>17</sup>

Antigua and Barbuda is member of following international organizations:

- 1) The Caribbean Community (CARICOM), a full member since 1974 and a signatory to the CARICOM Single Market and Economy (CSME)
- 2) The African, Caribbean and Pacific Group (ACP), created with the Georgetown Agreement in 1975.
- 3) The United Nations (UN) since 1981 and active participant in international agencies for example: UNDP, United Nations Economic Commission for Latin America and the Caribbean (UNECLAC), Food and Agriculture Organisation of the United Nations (FAO), United Nations Educational

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<sup>11</sup> International Security Sector Advisory Team (ISSAT), Antigua and Barbuda Country Profile, website: <https://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/Antigua-and-Barbuda-Country-Profile> (accessed 25 February 2019).

<sup>12</sup> The World Bank, website: <https://data.worldbank.org/indicator/sg.gen.parl.zs> (accessed 24 June 2018)

<sup>13</sup> Ministry of Education, Youth, Sports and Gender Affairs, website: [www.education.gov.ag/](http://www.education.gov.ag/) (accessed 24 June 2018)

<sup>14</sup> UNDP, website: [http://www.bb.undp.org/content/barbados/en/home/countryinfo/antigua\\_barbuda.html](http://www.bb.undp.org/content/barbados/en/home/countryinfo/antigua_barbuda.html) (accessed 24 June 2018)

<sup>15</sup> Debt Office. Ministry of Finance of Antigua and Barbuda.

<sup>16</sup> Country economy, website: <https://countryeconomy.com/national-debt/antigua-barbuda> (accessed 24 June 2018)

<sup>17</sup> The Daily Observer, website: <https://antiguaobserver.com/imf-debt-cleared-petrocaribe-debt-slashed/> (accessed 24 June 2018)



Scientific and Cultural Organisation (UNESCO), International Labour Organisation (ILO), United Nations World Intellectual Property Organization (WIPO), among others.

- 4) The Organization of Eastern Caribbean States (OECS) was created with the Treaty of Basseterre, on 18 June 1981. The 2010 revised Treaty of Basseterre created an economic union, establishing a single financial and economic space with free movement of people, goods and capital. This monetary union is under the authority of the Eastern Caribbean Central Bank (ECCB), which was established in October 1983.
- 5) The Organization of American States (OAS), a member since 1981.
- 6) The World Trade Organization (WTO), became a member in 1995 and in 2013 Antigua and Barbuda won WTO permission to suspend American copyrights and patents, perhaps as a possible retaliatory response to US restrictions on the island's online gambling industry.
- 7) The CARIFORUM, which is the Body comprising Caribbean ACP States, was established in the early 1990s with several functions like manage and coordinate policy dialogue between its members and the European Union. One example of this dialogue is the Economic Partnership Agreement (EPA) concluded between the CARIFORUM States and the European Union.<sup>18</sup>

Antigua and Barbuda is part of important international conventions, such as the Inter-American Convention Against Corruption; the Convention on the Elimination of All Forms of Discrimination; the Climate Change Convention; the Paris Agreement; the Nagoya Protocol, among others.<sup>19</sup> It also has bilateral investment treaties with Germany, the United Kingdom; free trade agreements with Costa Rica and the Dominican Republic; and double taxation agreements with Denmark, Norway, Sweden and the United Kingdom.

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

The precise volume of public procurement in Antigua and Barbuda is not known. Publicly available national statistics do not allow calculating what public procurement represents as a share of GDP and of total government expenditure.

The Ministry of Finance is the most important institution in the Antigua and Barbuda public procurement system, as specified in the Tenders Board Act (1991, amended in 2002) and in the 2011 Procurement and Contract Administration Act, which has not been enacted to date. The hierarchy of the public procurement system is as follows: the Ministry of Finance is overseeing the work of the Procurement Board, which in turn oversees the work of the Procurement Unit. The Minister of Finance appoints a chairperson of the Procurement Board, which establishes a clear institutional link between the public procurement system and public finance management. The Chief Procurement Officer heads the Procurement Unit. An Ombudsman is granted with authority to review practices and procedures.

According to information provided by the Ministry of Finance and Corporate Governance, between February 2016 and April 2017, almost half of all Tenders Board Decisions related to waivers, i.e. the

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<sup>18</sup> European Union, website: [http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc\\_137971.pdf](http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf) (accessed 24 June 2018)

<sup>19</sup> United Nations Treaty Collections, website: <https://treaties.un.org/> (accessed 24 June 2018); ECLAC - UN Observatory on Principle 10 in Latin America and the Caribbean, website: <https://observatoriop10.cepal.org/en/countries/2/treaties> (accessed 24 June 2018)



majority of procurement procedures were not following a competitive method. About a sixth of the decisions each were public tenders or selective tenders.

The Chamber of Commerce is a key institution in the procurement system, representing suppliers and linking public and private sectors. Nevertheless, there is no formal system for dialogue in place.

The multilateral development banks, the international development agencies and the international agencies, particularly the Caribbean Development Bank, the Organisation of Eastern Caribbean States (OECS) and the Organization of American States (OAS), are key players in the public procurement system. As in most states in the region, procurements funded by multilateral development banks and bilateral donors are ruled by the regulation of the agency funding the project.

### 2.3. National policy objectives and sustainable development goals

Antigua and Barbuda is committed to the Sustainable Development Goals. In 2009, the country decided to join bulk purchasing of prescription drugs by the OECS countries through the Pharmaceutical Procurement System as a tool to fulfil the previous objective 8 (A Global Partnership for Development). The National Economic and Social Council Act creates a council with functions such as “promote the goals of economic growth and development, participation in economic decision- making and social equity” (section 3.1.a).

The country, being part of the Small Island Developing States (SIDS), is aware of the vulnerabilities and peculiar challenges that it has. This is reflected in the partnership initiatives and voluntary commitments in which Antigua and Barbuda is listed as a partner or lead entity in the online platform of Partnerships for the SDGs, for example:<sup>20</sup>

Name	Objective
<b>Barbados Declaration</b>	Renewable Energy - to diversify its matrix and achieve a target of 15% energy supply from renewable energy by 2030.
<b>The Caribbean Challenge Initiative (CCI)</b>	Conservation initiative that brings together governments, companies and partners to accelerate action on conservation in the Caribbean.
<b>The Caribbean Energy Efficiency Lighting Project (CEELP)</b>	Catalyse the transition to low carbon economies and sustainable energy sectors through the provision of energy efficient lighting to communities in the Eastern Caribbean. The countries must remove the policy, capacity and investment barriers to energy efficient lighting.
<b>Lighthouses Initiative</b>	Assist in transforming SIDS energy systems through the establishment of the enabling conditions for a renewable energy-based future, among other initiatives about this topic.

Source: UN, Sustainable Development Knowledge Platform.

During the United Nations Conference to Support the Implementation of Sustainable Development Goal 14 held in June 2017, Antigua and Barbuda’s ambassador said that the country has taken actions in

<sup>20</sup> Sustainable development knowledge platform, website: <https://sustainabledevelopment.un.org/topics/sids> (accessed 24 June 2018); Government of Antigua and Barbuda, website: [https://ab.gov.ag/pdf/statistics\\_reports/mdg\\_main\\_report2009.pdf](https://ab.gov.ag/pdf/statistics_reports/mdg_main_report2009.pdf) (accessed 24 June 2018)





support of this goal. Activities included for example enacting and strengthening legislative frameworks to achieve better control and management of ocean and marine resources, updating the Fisheries Act and enacting the Environmental Protection and Management Act. In addition, Antigua and Barbuda has established a National Ocean Governance Committee.<sup>21</sup>

These initiatives are in line with the high risk of damage to life and property brought by increasingly dangerous hurricanes. When a hurricane strikes, emergency procedures, including for procurement, are in place.

## 2.4. Public Procurement Reform

Antigua and Barbuda is part of the regional initiative of several Caribbean states to review and reform public procurement. In 2011, as a result of the initiative, the House of Representatives and the Senate of Antigua and Barbuda passed the Procurement and Contract Administration Act, which has yet to be enacted. In the Explanatory Memorandum of the Bill, the government states that the act's purpose is to reform the law to comply with generally accepted international standards of government procurement, particularly the 1994 United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services. Further, the bill states that the standard requires competition wherever possible and award of contract based on fair competition. It is anticipated that the Director of Audit will conduct an annual review of solicitation, awards, and subsequent regulations for conformity with the Act.

However, this act has only been approved by the parliament, but not enacted by the Executive Council. Therefore, the reform has not achieved the envisioned benefit. The previous act (Tenders Board Act, 1991) continues to serve as the legal basis for public procurement in Antigua and Barbuda.

The 2015 PEFA report for Antigua and Barbuda highlights the important role that a reformed legal framework would play in addressing several challenges of the public administration. Notably, the 2011 Procurement and Contract Administration Act includes provisions for competitive procurement methods, and increased transparency in the public procurement process. This illustrates how important it is to link procurement reforms to financial reforms and more general governance initiatives.

According to the 2017 Budget Summary of the government of Antigua and Barbuda, the Ministry of Finance included in its priorities several procurement-related aspects, such as the modernization of central procurement systems, the expansion of procurement outreach, maintenance of a vendor registry and development opportunities through procurement.

Following the recommendation of a report from the United Nations Office on Drugs and Crimes (2016)<sup>22</sup> related to the procurement system and corruption in small island developing states, the government of

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<sup>21</sup> CARICOM Press Releases, website: <https://caricom.org/media-center/communications/press-releases/antigua-and-barbudas-presentation-to-the-plenary-un-oceans-conference> (accessed 24 June 2018)

<sup>22</sup> United Nations Office on Drugs and Crime (2016). The United Nations Convention against Corruption. Procurement and Corruption in Small Island Developing States: Challenges and Emerging Practices, <https://www.unodc.org/documents/corruption/Publications/2016/V1608451.pdf>.



Antigua and Barbuda could continue the implementation the procurement reform taking into consideration that:

- complex systems are not operative, systems should be built on qualities and traditions of the island culture;
- focus should be on capacity building, training, professionalization and monitoring of procurement officers;
- using institutions with a combined mandate can be beneficial;
- accountability, transparency, and access to information should be strengthened;
- efforts among the other small islands should be combined;
- civil society should be involved; and
- the private sector should be involved.



## 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 financial procedures, e-procurement, and procurement operations, 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 Antigua and Barbuda.

### 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.

The legal and regulatory framework in Antigua and Barbuda is characterised by the fact that the Procurement and Contract Administration Act has not been enacted nor implemented. The previous Tenders Board Act governs public procurement; this current legal framework presents a number of gaps. While the approved Act does cover many of the assessment criteria in this pillar, the lack of implementation means that most of these provisions remain ineffective. As a consequence, the assessors raise a red flag for Pillar I in general, as the lack of clarity in the legal and regulatory framework represents a serious obstacle to achieving the main objectives of public procurement.

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

The 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. It assesses the completeness of the legal framework and how different matters are covered, for example procurement methods, rules of procedure and systems that support procurement process.

Public procurement in Antigua and Barbuda is conducted according to the rules detailed in the Tenders Board Act (1991, amended in 2002), even though a new act, specifically on public procurement, was approved in 2011. This Public Procurement and Contract Administration Act has not been enacted since, which means that a clear legal framework for public procurement in Antigua and Barbuda is largely absent. Even with the provisions in the 2011 Procurement and Contract Administration Act, several gaps remain, which is why the assessors assign a red flag to the indicator.

#### Findings

The legal framework of Antigua and Barbuda is based on a relatively old law, the Tenders Board Act (1991, 2002). This Act was issued originally to regulate the operations of the Tenders Board and some aspects of the tender process. The provisions in the Tenders Board Act remain limited and largely do not comply with the assessment criteria. In 2011, the Procurement and Contract Administration Act was drafted to replace the Tenders Board Act. However, the Procurement and Contract Administration Act has not been enacted.

The assessment of this indicator evaluated both laws against the assessment criteria; however, given the limited provisions in the older Tenders Board Act and the availability of the more detailed Procurement and Contract Administration Act, a practical consideration was made to focus on the latter. From a



forward-looking perspective, aiming at providing the government with actionable policy advice, it was deemed important to evaluate the feasibility of the not-enacted 2011 The Procurement and Contract Administration Act vis a vis the MAPS assessment criteria. This analysis follows the question whether enacting this Act could provide a considerable step forward towards improving the public procurement system in Antigua and Barbuda as a “quick win”.

The majority of the sub-indicators covering the existence and clarity of the legal and regulatory instruments are not met and a red flag has to be assigned to every sub-indicator. Some gaps can be addressed with the enactment and implementation of the 2011 Procurement and Contract Administration Act. Several gaps would remain, however.

The fact that the Procurement and Contract Administration Act is approved but not enacted results in an unclear public procurement legal framework overall, which dissipates legal certainty for both public institutions and the private sector. While the Procurement and Contract Administration Act theoretically grants certain authorities to improve the public procurement system to the Ministry of Finance, these authorities cannot be used as long as the Procurement and Contract Administration Act is not enacted. This affects competitiveness, equal treatment and rights of the participants in procurement processes. The lack of implementation also affects the organization of the procurement system in terms of government bodies, authorities and civil servants responsible for public procurement as well as in the market opportunities to do business with the Government of Antigua and Barbuda.

The assessors identified opportunities to improve the rules of procedure by implementing the Procurement and Contract Administration Act and using the regulation power to rule in the above-mentioned aspects.

### **Substantive gaps**

Substantive gaps were identified with regards to three different aspects: first, related to the enforceability of the legal framework; secondly, related to procedural rules; and finally with regards to contract management.

The fact that the main law for public procurement is not enacted and implemented represents a major gap. Currently Antigua is applying the Tenders Board Act. The extended use of waivers to tender shows poor competitiveness in the procurement process.

Regarding procedural rules, substantive gaps in the legal and regulatory framework currently in force relate to the lack of:

- a specific rule to set a minimum time frame between the call for and submission of bids;
- procedures and mechanisms to ensure safety and confidentiality of the proposals. There are no standards on how to handle proposals once they are submitted by the tenderer; no standards are in place electronic records either;
- rules for dispute resolution during the procurement process and the absence of a clear right to judicial review over decisions of the Ombudsman;
- rules regarding SOE participation in the procurement process;
- rules on evaluation criteria, including technical specifications;
- norms for safekeeping records and treatment of confidential information;
- planning for an e-Procurement system development; and



- principles and norms for specialised legislations like PPPs and concessions.

Finally, a major gap was identified in the rules of contract management, including contract amendments and the lack of an information system of public procurement system.

These gaps are classified as high risk, and a red flag is assigned to this indicator as the lack of these provisions jeopardises the achievement of basic public procurement objectives.

### **Recommendations**

The Government could focus on measures to enforce the 2011 Procurement and Contract Administration Act. This could entail to use the regulatory functions of the Ministry of Finance and the Procurement Board to organize the legal instruments governing public procurement, set additional implementing rules and instruments to manage the procurement process in a fair and competitive framework, while respecting international agreements.

The Ministry of Finance could emphasise the importance of the public procurement system for delivering goods, works and services to citizens. As part of these efforts to raise awareness about the strategic dimension of public procurement for public service delivery and development, it would be important to demonstrate public procurement's share as part of GDP and overall government expenditure, notably to the Executive Committee.

Even if implemented, the Procurement and Contract Administration Act could be updated to include missing provisions, such as:

- rules to restrict discretion that procurement entities and officials have in conducting the procurement process;
- thresholds or the ability to set thresholds to define procurement methods;
- general conditions for the publication of market opportunities, minimum content, days between notice and submissions;
- applicable regulations for procurement by State-Owned Enterprises (or Statutory Bodies);
- the conditions for participation in public procurement, most notably general rules for qualification, eligibility and exclusions;
- specifications of procurement documents using technical specifications, ensuring neutral treatment with regards to such specifications;
- general provisions to ensure that, whatever evaluation criteria are used in competitive procurement methods, these criteria are objective and clearly defined in the procurement documents (including guidelines to assess quality);
- clarify the complaint system including competencies of the Ombudsman and related processes;
- contract management provisions, including rules in case the value or terms of the contracts are amended;
- norms for safekeeping of procurement documentation;
- e-Procurement strategy; and
- specialised legislation for PPPs and concessions.



## 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 four 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.

### Findings

Antigua and Barbuda currently lacks implementing regulations and tools to support the legal framework. This represents a major gap, as these instruments are needed to make the legal framework for public procurement operational.

### Substantive gaps

The assessors identified three substantive gaps, which means that Antigua and Barbuda does not comply with any of the sub-indicators: First, regulations are not defined. Second, there is no public access to the entire regulatory framework. Third, supporting documents, standard clauses and contracts are not available. The assessors did not find evidence of the existence of supporting tools such as model procurement documents or standard contract conditions. The draft Procurement Manual based on the Procurement and Contract Administration Act cannot be considered a supporting tool, as it does not give guidance on the interpretation of the law or recommendations to follow when drafting procurement documents, selecting the supplier, performing or liquidating the contract.

The Act includes responsibilities for designing and drafting model procurement documents for a wide range of goods, works and services, including templates for contracts and for each category of goods, works and services to be procured. However, these responsibilities only take effect once the act is enacted.

The benefit of support procurement tools such as handbooks, model procurement documents and standard conditions enhance transparency, support procurement officers and prevent legal disputes before they arise, and communicate to competitors what the precise terms and conditions of a procurement opportunity are. This helps potential suppliers to prepare their participation; it also provides clarity on decision making by procuring entities and as a result, provides legal certainty to the market and manages expectations of businesses. On the side of the procurer, such documentation also supports officers in drafting documentation by offering a clear starting point based on which the procurement authority has to design and complete each process.

The absence of a regulatory framework and tools to support it puts the achievement of basic public procurement objectives at risk. Therefore, these substantial gaps are classified as high risk and a red flag is assigned to this indicator.

### Recommendations

Antigua and Barbuda could enforce the Procurement and Contract Administration Act and publish the entire legal framework in an easily accessible web portal.

In addition, the Procurement Board to define and execute a plan to prepare and publish model procurement documents, standard contracts and clauses and a procurement manual. This plan could prioritize the documents to be prepared and to identify the required resources to develop them.





Antigua and Barbuda could also review the Procurement Manual to make it an operative guidance tool.

### 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.

#### Findings

Antigua and Barbuda does not make considerations related to sustainability in its public procurement framework. No considerations of international commitments are made.

#### Substantive gaps

The assessors did not identify any references to a Sustainable Procurement Policy or to international obligations in the Tenders Board Act neither in the Procurement and Contract Administration Act. As the Tenders Board Act and the Procurement and Contract Administration Act both suffer this substantial gap, they are classified as high risk and a red flag is assigned to this indicator.

#### Recommendations

Antigua and Barbuda could evaluate the need to include sustainable public procurement in the legal framework and identify obligations derived from international instruments to be included in the legal and regulatory framework. Sustainable public procurement contributes to achieving environmental objectives. Antigua and Barbuda could benefit from a Sustainable Procurement Policy, for example in the area of waste management, including electronic waste, but also regarding water conservation and the promotion of sustainable agriculture. Furthermore, sustainable public procurement may increase awareness of environmental issues within the country and establish a norm for the private sector and for the society at large.

Antigua and Barbuda should honour its regional and international commitments when dealing with international acquisitions of goods and services or construction of works. The regulation could establish how the commitments are implemented in the procurement process.

## 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 constitute the overall governance in its public sector.

Some institutions and their responsibilities with regards to public procurement in Antigua and Barbuda have been established and clarified in the Tenders Board Act and the 2011 Procurement and Contract Administration Act, which has not been enacted or implemented. Some ad hoc centralisation of aspects of purchasing is conducted by the Department of Public Works.



There is no integration between the financial management system and the public procurement system and no provisions as to how processes, appropriations and payments are to be handled.

It is not clearly defined what kind of institutions are considered as procuring entities. Potential for an institutional conflict of interest exists because the Procurement Board is both regulator for procurement and at the same time responsible for purchasing decisions.

There is no information system supporting public procurement, no training or professionalization activities, and no ability to develop and improve.

#### **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. There is no clear relation between financial management and procurement planning in the legal framework of Antigua and Barbuda.

##### **Findings**

There are no financial procedures defined in the procurement process nor in the Tenders Board Act nor in the Procurement and Contract Administration Act. There is no existing requirement for a procurement plan to be prepared in the procuring entities. In addition, there is no clear appropriation process for acquisitions.

##### **Substantive gaps**

The substantive gaps identified in this indicator are related to the absence of financial management procedures in the procurement process. There are no general rules linking procurement and contract administration activity to financial planning. Procurement planning does not support the yearly financial planning.

There are no rules for financial planning and budgetary expending in the procurement process; expenditure is regulated with general rules that do not consider the particular stages and requirements of a procurement process.

At the level of the procurement process, there are no clear financial requirements either. The 2011 Procurement and Contract Administration Act requires an estimate of the value of the intended procurement. However, this estimate is not linked to the availability of funds (section 17). The assessors did not find requirements like funds availability certification or a process to authorise payments, or a mechanism for feedback related to delays in payments to suppliers.

There is no specific procedure for processing invoices and authorising payments in the procurement process. Stakeholders mentioned serious delays in payments. No information was available to assess the quantitative indicator (share of invoices paid on time.)

The lack of integration between the public financial system and the procurement system, from budgeting, planning, treasury operations for payment, contract management, among others, is a substantial gap. Therefore, it is classified as high risk and a red flag is assigned to this indicator.



## Recommendations

The government of Antigua and Barbuda could define procedures to harmonise the procurement rules to the budget and expenditure regulation. The main objective is to ensure that sufficient budget and cash flow is available to honour procurement obligations before entering into such obligation. Other procedures could be developed, for example an annual procurement plan and tools to report its execution. These procedures are important to provide clear expectations and procedures. If these are not available, experience shows that actors use ambiguities in their favour, potentially resulting in corruption.

## 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.

The 2011 Procurement and Contract Administration Act that has not been enacted, covers most of the sub-indicators. There is an organisational structure to address the normative and regulatory function but its functions do not include all the responsibilities defined by this indicator.

## Findings

The Tenders Board Act does not assign the regulatory and normative function with regards to public procurement. According to the 2011 Procurement and Contract Administration Act, the Ministry of Finance is responsible for the normative and regulatory function in Antigua and Barbuda's public procurement system. However, this provision is not actually in force. Regulations and orders under the Procurement and Contract Administration Act are subject to the positive resolution of Parliament (section 54).

The 2011 Procurement and Contract Administration Act, once enforced, would establish the Procurement Board. The members of the Procurement Board are:

- two ex officio members: the Permanent Secretary of the Ministry responsible for Public Works and the Accountant General;
- a person appointed by the Ministry of Finance;
- an experienced attorney-at-law;
- two persons from the private sector appointed by the Minister of Finance.

However, the structure described in the Procurement and Contract Administration Act does not cover all responsibilities outlined in the assessment criteria. In addition, there is no clear regime to manage conflict of interests.

As the Procurement and Contract Administration Act is not enforced, there is no organisation, funding and staffing of the Procurement Unit.

## Substantive gaps

As mentioned before, the public procurement regulatory and normative function in Antigua and Barbuda described in the 2011 Procurement and Contract Administration Act, is not clearly enforced. This represents a major gap in itself.



In addition, a substantive gap relates to the existence of conflicts of interests in the Procurement Board. The Procurement Board has procuring responsibilities in accordance with section 41 of the Act and at the same time responsibilities to prepare regulations. This can result in a potential conflict of interest to the extent that the regulator is expected to intervene towards the enforcement of rules. With this combination of diverging responsibilities in the same institution, there is a risk that this institution must supervise itself without external accountability. Furthermore, there is no general provision regarding conflict of interest management.

Other gaps relate to the absence of assigned responsibilities for:

- monitoring of public procurement and gathering procurement information,
- statistical data and procurement reports,
- the development of initiatives to improve public procurement,
- providing tools and documents,
- training and professionalization of the procurement function,
- the development of an information and analysis system for procurement, including e-Procurement tools.

These gaps are classified as high risk and a red flag is assigned to this indicator based on the above findings.

### **Recommendations**

The first and most important recommendation is to enact and enforce the 2011 Procurement and Contract Administration Act and its provisions and review its existing gaps. The government of Antigua and Barbuda could assess the need to separate the operative from the regulatory functions of the Procurement Board, in order to reduce conflicts of interest. The second recommendation is to clearly designate a responsible entity in charge of developing the functions that are not currently covered by the Procurement Board. A careful evaluation could be undertaken to determine the appropriate institution for this task; one alternative could be to assign regulatory tasks to the ministry, while assigning operative tasks to the board.

## **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.

Some provisions with regards to the responsibilities and rights of different entities in the public procurement processes exist, but many aspects remain unclear. A central procurement function does exist; however, limited consolidation and aggregation is conducted.

### **Findings**

The legal and regulatory framework in place (Tenders Board Act) does not contain clear provisions on the entities that can conduct procurement activities and applicable procedures. The Procurement and Contract Administration Act clearly defines the responsibilities and powers of the Procurement Board and



the Chief Procurement Officer. No thresholds are defined within the existing legislative framework that must be considered in order to determine which institution is responsible for the particular procurement case.

Under the Procurement and Contract Administration Act there is a central procurement function in the Procurement Board, which conducts centralised solicitation, not necessarily centralised procurement. This is done in the framework provided through the definition of solicitation set forth in the Procurement and Administration Act of 2011 and the possibilities that centralised procurement/framework agreements offer. The Department of Public Works has responsibilities related to inventory and minimizing costs of goods (section 12 of the 2011 Procurement and Contract Administration Act). These authorisations may be the origin of the department's activity as *de facto* central purchasing unit procuring office supplies, tires and cleaning products.

### **Substantive gaps**

Assessors identified substantive gaps in (i) the lack of clarity of the responsibilities of the procuring entities and the absence of procurement procedures; (ii) the absence of a centralised procurement body; and (iii) the absence of a clear accountability regime for the Procurement Board.

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. In addition, procurement officers, bidders and suppliers need to know the level of authority and the responsibilities of each one of the officers working in a procurement process, as well as know the procedures to be applied. Lack of clarity might result in legal uncertainty and may be the origin of misinterpretation and corruption. Centralised procurement may enhance efficiency and effectiveness in the system, reducing time invested in the procurement process, standardising government acquisitions, among others. Finally, an accountability system is key to generate confidence in the procurement system. Therefore, while these gaps were classified as medium risk, a red flag was assigned to this indicator.

### **Recommendations**

As with previous indicators, Antigua and Barbuda could address several gaps by enacting and enforcing the 2011 Procurement and Contract Administration Act, to ensure that all the responsibilities, processes and authorisations specified in this act are actually implemented. Several additional provisions could be included into the act to clarify which institutions are the procuring entities, their responsibilities, competencies and functions. Amendments to the regulation could also define an accountability policy for procuring entities, especially the Procurement Board.

In addition, Antigua and Barbuda could evaluate the possibility to institutionalise a centralised system for those goods, works and services that are easy to standardise and are procured repeatedly by several procuring entities. This will require defining a policy on this type of procedures, as well as the institutional requirements.



## 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.

Substantive gaps were identified in this indicator. There is no information system or information policy in Antigua and Barbuda, requirements to gather information and data are limited to retaining some information, and there are not obligations related to develop and maintain an information system.

### Findings

There is no information system developed for procurement. 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, information about procurement processes remains very limited. The public procurement cycle is not completely covered.

E-Procurement and data analysis are not in place. There are some plans to develop e-Procurement tools, but none of them are currently implemented. Regarding data or information analysis, the legal framework includes an obligation to gather some data about procurement processes, but does not define clear procedures to analyse this information.

### Substantive gaps

Substantive gaps relate to the absence of technology to support an information system of public procurement, as well as the absence of an institution that has the assigned responsibility for:

- developing the information system,
- promoting and developing e-Procurement tools
- gathering, managing and using procurement data to improve the performance of the procurement system.

All of these findings represent major gaps that are an obstacle to achieving basic public procurement objectives; therefore, they were classified as high risk and a red flag is assigned to this indicator.

### Recommendations

Antigua and Barbuda could define a responsible entity to plan the development of a comprehensive information system for the procurement process. This could include the development of an open procurement policy to gather and use information of procurement procedures. In addition, such efforts could include 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 public procurement. The indicator is divided in three sub-indicators.

### Findings

Antigua and Barbuda does not meet the three sub-indicators due to a lack of structured training programmes, performance monitoring systems and because it does not recognise procurement as a profession.

### Substantive gaps

Major gaps were identified in this indicator, relating to the absence of a system to support the professionalization of procurement activities. There is no comprehensive training and evaluation procedure for procurement officers. No other support systems are developed. Another gap is the absence of procedures to use monitoring of the procurement system as a mean to develop the system itself.

There are no extensive training and evaluation procedures for procurement officers. The existing training events are not organised as part of a professionalization program and are not part of the development of procurement officers. The lack of training programs and support for the professionalization of the procurement function is a substantive gap. The gap related to professionalization of the procurement function means that there are no specific provisions to recognise procurement as a function requiring special training and evaluation.

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.

Another gap is the absence of procedures to monitor the procurement system. The existence of indicators of the public procurement system allows understanding how the system is working and to design and undertake initiatives to comply with the objectives of the system when it has not achieved. In order to apply 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.

These gaps represent substantial obstacles that might jeopardise the achievement of basic public procurement objectives. Therefore, they are classified as high risk and a red flag is assigned to this indicator.

### Recommendations

The main recommendation to the Government of Antigua and Barbuda is to design a procurement information system and establish indicators to monitor it. Monitoring could be used to drive the improvement of the system. Any activities could be linked closely to the creation of an information system



and e-procurement system as outlined in indicator 7. As a first step, the main needs in the area of monitoring and training could be assessed, in order to prioritise most important tasks based on a realistic and accurate understanding of the situation. In implementing the information system, the government can set phases and assign responsibilities to different institutions to start intervening in specific areas of concern.

The Ministry of Finance could work with the states in the region to organize a professionalization programme for the procurement function. These efforts could build on the country's recent experience when assigning procurement officials to remotely join training The Caribbean Procurement Training and Consultancy Centre (CPTCC) in Jamaica. This training is accredited with the Chartered Institute of Purchasing and Supply (CIPs). Other procurers from the OECS participated in the training. By tackling such a challenge together, the different governments can learn from the good practices of their "neighbours", and also reap financial benefits by consolidating demand and access to training services.

### 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.

Most of the procurement processes in Antigua and Barbuda are being conducted through non-competitive methods by seeking waivers for the obligation to conduct a competitive tender, with limited justification. Public information is scarce. Most documents are confidential. This has resulted in limited participation from external stakeholders. Procurement is carried out under a paper-based system and the Tenders Board does not have all the documents that make up the record of the process. Contracts and amendments are handled directly by the procuring entities. Finally, no procurement strategies have been developed for the most important sectors in the public procurement system.

The largest constraint for suppliers to participate in the public procurement market is the serious delay in payments. In addition, there are no fora for dialogue with the private sector, nor training programmes in place for suppliers. Although the Tenders Board has approved a register of previous suppliers, it is not fully implemented or used.

#### 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.

There are severe risks that Antigua is not achieving the objectives it seeks through public procurement. Red flags are raised for the widespread use of waivers to tender without a clear process of authorisation, and the serious delay in payments to suppliers.





## Findings

A small sample of tender documents was provided during the fact-finding mission, including selective tenders (civil registry and cabinet dashboard), waivers of tender (construction of a pond and acquisition of conveyor belts for crushers), and public tendering (computers for board of education). The assessors also had access to files for a process with prequalification of suppliers for road rehabilitation under CDB rules.

At the beginning of a procedure, the Tenders Board either grants authorization to waive a competitive tender or sends specifications to start the solicitation process to the requiring entity. In competitive processes, the Tenders Board carries out the invitation, drafts of tender documents, receives bids in a tender box and opens the bids. An evaluation committee is established in the procuring entity, which produces an evaluation report and submits it to the Tenders Board, which awards the process. Contract negotiation, signature, implementation, inspection and payment are the responsibility of the procuring entity. Statutory bodies are bound to the Tenders Board Act, but in practice follow their own procedures, with only ad hoc submissions to the Tenders Board.

Even though it is not established in legislation, procuring entities are acquiring certain common items such as office supplies, tires and cleaning products through the Ministry of Public Works which is a *de facto* central purchasing unit for these goods. The Ministry of Public Works conducts a bulk purchase process, stores the product in its inventory and then sends it to the requiring entities, which in turn pass the corresponding budget to the Ministry of Public Works. Although the interviewed procuring entities admit that this process is easier, they state that they still do burdensome paperwork related to this procurement. Inventory costs and corresponding risks are allocated entirely to the government.

Some of the pharmaceuticals needed are procured centrally via the framework created by the OECS. Other pharmaceuticals are bought locally from suppliers that represent foreign companies in Antigua and Barbuda.

Several procurement methods are specified in the legal and regulatory framework. Out of the options, most processes are conducted as waivers to tender. According to stakeholders, there is some subjectivity in granting waivers; often, the correct sequence is not adhered to, resulting in direct contracting before the waiver has been received or a change to the procurement method during the procurement process. Overall, the frequent use of non-competitive procurement procedures is problematic as it has a negative impact on the efficiency, effectiveness and fairness of procurement procedures, increasing opportunities for corruption.

Three procedures are available for competitive processes: 1) through selective tendering, 2) through open tendering, or 3) using the regulation of external donors or development banks. Pre-qualification is only used in the latter, such as the process for a road rehabilitation process procured using CDB funds. There are a limited number of public tenders.

Standardisation is not the norm for all procurement. The tender documents analysed share in general a common table of contents, but no common elements were found otherwise. The documents analysed contain clear procedures and times for bid submission, receipt and opening, but these do not comply with international best practice. Requirements, eligibility criteria and contracting clauses are not included.



Evaluation criteria go beyond cost, and include many aspects of the proposal, which are described in the tender documents. Nevertheless, the encountered descriptions are broad. There is no information included that details how exactly the bids will be evaluated, such as by means of formulae. This adds subjectivity.

The reviewed documents did not include any sustainability criteria, nor incentives for exceeding defined performance levels. No disincentives for poor performance currently used in the country.

Awards of the processes were not disclosed.

After the Tenders Board takes an award decision, procuring entities sign and implement contracts. The Tenders Board has no information about contracts. In the sample provided, there are extensive delays from the date of award to the date of signature, as clauses must be agreed after bids are submitted. This occurs because there is no information about the contract included in the tender documents, which gives rise to controversy once the contract is awarded. Persons interviewed said there is limited contract oversight and few inspections. This process does not follow standard procedures, which makes it difficult for suppliers to know how their contract will be managed.

Procurement is carried out in paper and files are not complete nor easily accessible; no statistics are available. None of the processes analysed had complete information in the file.

Suppliers complained about serious delays in the payment of obligations acquired by the procuring entities. One supplier said he had invoices outstanding for more than five years. This is creating cost overruns that may exceed 100% as described by the persons interviewed. Such large overruns are clearly impacting government finances, as well as small businesses with limited cash flow. Additional complaints relate to a lack of contract planning that impacts negatively the timeliness for contract amendments.

Although there are no legal or regulatory barriers to involvement of relevant stakeholders during the procurement process, there is practically no engagement of civil society.

### **Substantive gaps**

There is a substantive gap with regards to market research. There is no evidence of market analysis being undertaken for the optimal identification of procurement strategies. This is valid for all the procurement methods, including the requests for waivers of tenders.

The use of public tendering is not widespread. There is a substantive gap in choosing, documenting and justifying the procurement method, especially regarding the waivers to tender, as most processes are being carried out in a non-competitive way. A clear and objective process for authorising waivers is not being followed, bringing uncertainty to the stakeholders involved. This represents a major hurdle to the achievement of basic public procurement objectives, and thus constitutes a red flag.

The requirements needed for suppliers to be eligible to sell goods and services to the government could be better explained. Not doing so creates a high risk of selecting the incorrect supplier, and not obtaining the desired outcomes of the contract. In restricted and non-competitive procedures, the description of the desired outcome is very limited. This means that suppliers found it difficult to provide correct proposals. The Tenders Board might face challenges to come to an objective decision regarding the authorisation of waivers to tender. No sustainability clauses nor incentives for exceeding defined performance levels and disincentives for poor performance are used. Finally, contract clauses are not



included in the tender documents, creating delays in the implementation, as these clauses are negotiated after the award of the contract.

There is also room for improvement in the specification of evaluation criteria, which currently creates space for subjectivity and is not sufficiently clear for bidders to understand how the evaluators come to a decision.

Public bid openings are not always used. The Tenders Board has begun to inform participating bidders of bidder names and corresponding prices via letter. Persons outside of the Tenders Board are not allowed to monitor bid submission, receipt and opening. Because of this lack of third-party oversight over the activities of the Tenders Board, there is no evidence that confidentiality is being ensured. Furthermore, in some cases, individuals from the private sector are appointed as members of the evaluation committees, which raises additional concerns related to confidentiality and potential conflicts of interest.

As many of the documents and decisions are confidential, there is no space for adequate oversight. Furthermore, according to stakeholder interviews, decisions from the evaluation committees or the Tenders Board were not always perceived as objective. This is emphasised by the fact that there are no guidelines to establish when a tender could be waived or how to correctly evaluate a tender. In addition, there is no evidence that contract awards are now being disclosed for public tenders in the Tenders Board website. Contract awards remain unannounced for other procurement methods, limiting the possibility of suppliers to complain and citizens to monitor contract delivery.

Contract supervision does not follow best practices of standardisation and control.

There is a substantive gap related to the timeliness of payments because of challenges in government cash flow, a lack of expedited invoice review and payment procedures. These issues are of concern because they hinder the participation of interested suppliers, cause higher prices and cost overruns for government and create cash flow issues to suppliers. Assessors raise a red flag for these gaps and they are classified as high risk.

Information to calculate quantitative indicators was not provided to the assessors, nor samples of contracts. No procurement statistics are in place, and decisions to modify regulation or procedures are not based on data. Procurement processes are carried out in a paper-based system. Files are not complete nor easily accessible. There is no record of the planning or contract implementation stages. None of the processes analysed had complete information on file, and the bids were not included in the file.

## **Recommendations**

Antigua and Barbuda could strengthen the overall performance of the public procurement processes. This could entail clarification of rules, but also measures to build the capacity of the procuring entities. A main objective could be to increase competition and use open tenders as the default method, while resorting to waivers only in well-justified cases. Standard documents, including standard contracting conditions, as well as manuals and other guidance could be developed to support procurers and suppliers during the procurement process. Tools could also address waivers, for example by structuring the requests and justification process through standard documents and manuals. In addition, these guidelines and capacity building efforts could include the contract management stage.



Multi-stage procedures could be used in complex procurements regardless of the origin of funds, to ensure that only qualified and eligible participants are included in the competitive process. This would save time in the selection process and limit the risk of ineligible suppliers bidding and potentially being awarded contracts. A pilot using one process could provide valuable insights to the Tenders Board.

Suitable framework agreements could be set up, as the need for them has been identified and the procuring entities are used already to acquiring certain goods from the Ministry of Public Works. In these agreements, the costs and risks of inventory could be left to the suppliers, which have the expertise to handle them. Goods could be purchased via purchase orders to a set of established suppliers.

To ensure that procedures are followed correctly, citizens and suppliers could be allowed to participate at milestones such as the opening of the bids for any competitive process. Transparency could be increased by disclosing awards and any other documents, for example. During the evaluation process, only public officials could be allowed to evaluate, with private consultants called for specific tasks. The government might wish to appropriately vet consultants before hiring them. Confidentiality and codes of conduct forms could be enforced with these persons from the private sector.

Implementing an e-Procurement system like the CARICOM's Public Procurement Notice Board would be preferred; in fact, Antigua and Barbuda can draw on a country page under this system. An even more basic, first step could be to use electronic files where possible. This would facilitate sharing information between different institutions in the public procurement system in a practical way. Such an approach could enable initial information gathering and create insights that can be used for procurement planning and reforms.

## 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.

Antigua and Barbuda's public procurement market is not fully functional. Assessors raise a red flag due to the serious delay in payments to suppliers. Other gaps identified include the lack of dialogue mechanisms with the private sector and the absence of sector strategies.

### Findings

There is no regular dialogue mechanism in place through associations or other means. The 2011 Procurement and Contract Administration Act was drafted without consultation from the private sector.

Some suppliers, especially SMEs, lack skills to provide complete responses to tender documents, especially to the most complex ones. Even in simple procurement, government officials refer to receiving bids with poor documentation and unclear answers. Although this is the case, no training programmes are available for building the capacity of suppliers and improving their skills to prepare them to participate in the public market. The Tenders Board refers to a lack of resources available to provide this kind of



training. To correct this situation, the Tenders Board is planning to publish a roster of private experts available for suppliers to support their bidding process.

While a suppliers' register has recently been approved, such a register remains to be implemented and the Tenders Board does not keep a formal register of suppliers. Some initiatives to gather information on suppliers exist, but without any requirements as to how suppliers qualify for being included.

There is some degree of supplier organisation. Groups such as the Employers Federation and the Chamber of Commerce are present in-country and represent the interests of the private sector. Not all its members are willing to bid for business opportunities with the government. In fact, a considerable number of them are not willing to participate at all because of payment delays.

To tackle payment delays, the Ministry of Finance has established a new cash management team responsible for establishing priorities to pay with the available cash flow. However, priorities are not handled on a "first come, first served"-basis and are not defined objectively. This uncertainty has led to overprices that can be as high as 100% above general market prices.

Other constraints identified are: the lack of access to financing, unfair contract clauses which are negotiated after the process is awarded, and lack of effective and trustworthy review and appeal mechanisms. Foreign suppliers are affected by the lack of general information online and in general outside of the country. In fact, the procurement process is being carried entirely on paper. While bids are allowed to be sent by e-mail, this practice is not encouraged: when sending bid documentation via email, according to tender documents, authorities can charge bidders USD 200 for printing the documents in order to be able to analyse them.

Government officials identified public works, IT and pharmaceuticals as three of the main sectors in the public procurement market. These have not been included in any policy document for developing targeted procurement strategies and understanding the risks and opportunities that they entail.

### **Substantive gaps**

The government is not encouraging open dialogue with the private sector about procurement reform. There are no established mechanisms for dialogue nor a consultation process, even for the most important reforms such as the new Procurement and Contract Administration Act. Involving the private sector in shaping public procurement reform can help ensuring that the resulting, updated legal and regulatory framework does not provide undue hurdles towards participation of interested suppliers or create unfair advantages or disadvantages for certain groups.

There are no programmes to build capacity among private companies to help them participate in the public procurement market. No programmes are envisaged, as there is no clarity of available budget or the entity responsible for conducting that training. The idea of having a roster of private experts for suppliers could help bridge some of the gaps. However, available budgets and possible conflicts of interest need to be analysed before it is implemented.

There is no registry of suppliers. A form for registration has been developed but it is not yet enforced. The government has no clarity if it could be applied within the current legislation.

Many suppliers are not willing to participate in the public procurement market because of the above-mentioned constraints, including serious payment delays. Other constraints identified are the lack of the



following: access to financing; fair contract clauses; effective and trustworthy review and appeal mechanisms; and lack of training and guidelines for suppliers, especially for SMEs.

A substantive gap persists because important sectors such as public works, IT and pharmaceuticals have not been included in any proper document for developing targeted procurement strategies, assessing risks and opportunities.

Taking these challenges together, these gaps are classified as high risk and a red flag is suggested to be assigned for this indicator, as the public procurement market does not seem functional, which represents a major obstacle to achieving public procurement objectives and because it cannot be mitigated directly or indirectly. 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.

### **Recommendations**

The most important aspect to be tackled relates to the serious delays in payments. Aside from efforts to better integrate the public finance management system with the public procurements system as outlined in indicator 4, it is recommended to further streamline the management of payments and budget appropriation.

A second major recommendation is to expand the engagement of suppliers. A structured mechanism for dialogue can provide support in tackling several of the issues outlined above, such as identification of constraints in participating in the public procurement market, exchange of feedback on public procurement rules and processes, and to communicate procurement opportunities. This can be the first step to increasing bidders' ability to respond to tenders, where training is not feasible due to budget constraints. In engaging suppliers, great care should be taken to conduct any exchange in an open and transparent way, i.e. allowing participation from all interested parties, communicating the possibility for exchange as widely as possible and communicating any results as widely as possible. This measure is important to counteract opportunities for corruption.

The approach to a supplier register could be reconsidered. First, the objectives for the public institutions could be defined, as well as the advantages for suppliers. On the basis of these considerations, the registration mechanism could be designed and embedded into a communication strategy. Finally, risks and opportunities for the identified sectors could be assessed and documented, to improve how procurement for these goods and services is being carried out.

## **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.



Stakeholder participation in public procurement is largely absent in Antigua and Barbuda, due to legal constraints and a lack of transparency of procurement information.

Antigua and Barbuda has an audit framework in place, but it has substantive gaps with regards to regular implementation. There is no mechanism or provision related to internal control.

While there is a mechanism for challenges and appeals, there is no administrative complaints procedure in place. The new Procurement and Contract Administration Act includes the possibility of a person to file a complaint related to the award of a contract or the procurement process to the Ombudsman.

In relation to anti-corruption measures, Antigua and Barbuda has adopted a legal and regulatory framework and institutions.

Considerable gaps remain, including of reporting on allegations of prohibited practices. There is no debarment procedure and suppliers are being excluded from the public procurement system at the discretion of procuring officers. Finally, there are no mechanisms to detect and prevent corruption in procurement, no civil society organisations carrying out contract monitoring and social audit, and no secure and confidential channels for reporting prohibited practices or unethical behaviour.

## 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 fairer, 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.

Gaps were identified for this indicator because there are no formal dialogue mechanisms between government and civil society; and procurement documents are confidential.

### Findings

Civil society is not involved in the public procurement reform process. For the drafting of the Procurement and Contract Administration Act, no consultation was carried out by the government with citizens. In addition, there are no programmes in place to build capacity of stakeholders to understand, monitor and improve public procurement.

Planning, selection and contract data remain confidential. Award information with the name of the supplier and bid price is only available for the few public tenders done, and this practice was begun only some years ago. Nevertheless, the assessors could not review historical award data in the Tenders Board's website. No information of award is disclosed for other procurement methods. The only document that is public and free for consultation is the invitation published in the newspaper and on the Tenders Board's website.

There are no specific references in legislation or regulation about citizen participation. Although there are no prohibitions, participation is not encouraged in any stage of the procurement cycle. Section 30.1.a. of



the Tenders Board Act allows for the consultation with persons from the public at the tender, award and contract stages. However, these consultations are conducted only at the Board's discretion, and with certain individuals chosen by the Board. Furthermore, as Board business and documents are considered confidential (Section 31), observation by general citizens or external stakeholders is not possible. The new Procurement and Contract Administration Act does not include any provisions on this matter.

### **Substantive gaps**

There is no civil society involvement in public procurement reform process and no programmes are in place to change that situation or to build capacity of stakeholders to understand, monitor and improve public procurement.

General confidentiality of procurement documents as established in the Tenders Board Act, along with actual practices make it impossible for stakeholders to have adequate and timely access to information. The only documents published on the Tenders Board website are the invitation to tender and the award, but they are not kept as historical data available to all.

The Tenders Board Act has no provision allowing citizen participation. Consultation with persons from the public are allowed at the tender, award and contract stages, but only at the Tenders Board's discretion, and only to certain individuals chosen by the Board.

There is no evidence of direct participation from citizens in consultation, observation and monitoring.

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. These identified gaps therefore result in a classification of medium risk.

### **Recommendations**

As for indicator 10, the government could consider creating spaces for discussion with citizens, especially at the planning stage when opening bids and during contract implementation. For this, training could be provided, or at least guidelines could be created to build capacities among citizens and explain in a clear language provisions and procedures related to public procurement.

In addition, legal reforms could be considered, as neither the current act nor the new Procurement and Contract Administration Act provide for the possibility of citizen engagement and for open contracting. Confidentiality could be kept only at certain instances of the process, but general documents and milestones could be disclosed to enable stakeholder participation.

## **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 could 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.





Antigua and Barbuda has audit systems but they have significant weaknesses. Gaps were identified for all sub-indicators. The assessors raise red flags because the Public Accounts Committee is not meeting regularly, and the audit office does not have the capacity to undertake all required audits.

## **Findings**

The legal framework establishes external control through the Director of Audit; provisions for internal control are missing. According to stakeholders, the audits that are conducted do not relate to procurement; no written procedures for conducting procurement audits exist.

When performed, these audits only include compliance checks. No considerations about the effectiveness or efficiency of procurement operations are reviewed. The auditors have sometimes found prices to be higher than normal. However, as the procedure follows the general rules and includes the authorization and sign-off by the corresponding minister, there is no finding included in the report about the cost overrun.

Internal audits are programmed annually. Some ad hoc audits are carried out. This only applies to central government; statutory bodies are not included in the audit programme.

The Director of Audit reports yearly to Parliament and a Public Accounts Committee of Parliament is in place to review these audit reports. In practice, examination does not take place, because the Public Accounts Committee of the Parliament in charge of this activity is not active and does not meet regularly.

The PEFA 2015 report identifies weaknesses in the response and follow-up of external audits. These include legal ambiguity for the following: publication of audits, sending the audit reports of the audited entities, and formal follow-up of audit findings.

There is no evidence of internal control mechanisms in place, nor do any written procedures specify internal controls.

After the audit report is submitted to the auditee, no specific timeframe is given to respond and implement recommendations. Furthermore, there is no evidence that recommendations are implemented. No follow-up mechanisms are in place to determine whether the recommendations were carried out or not. In fact, the only moment when the findings and recommendations by auditors are revised, is during the next audit round.

The process for selecting auditors follows the general procedure for selecting public officials and is deemed to be fair and transparent.

There is no programme established to train auditors on a regular basis nor any specific emphasis is put on procurement in the few isolated training sessions conducted, except for the one conducted in 2016 by a consultant hired by the Commonwealth Secretary, and one conducted by the European Union in 2015.

The appointment of auditors to specific audits depends on their general expertise and the classification of risk of the institution to be audited. Entities are classified as low -, medium-, or high-risk institutions according to previous audits, number of procurement processes conducted and budget. More experienced auditors are appointed to the high-risk entities, but there is no consideration of procurement knowledge for appointing auditors. Procurement specialists have never been consulted while performing audits.



## **Substantive gaps**

There is a substantive gap related to internal control, as there is no mention of it in legislation or regulation. Furthermore, there is no evidence of internal control mechanisms in place, nor any written procedures for them.

Audits of the procurement function are not undertaken on a regular basis. When conducted, these only include compliance checks. No aspects related to the effectiveness or efficiency of procurement operations are reviewed. Thus, cost overruns are generally not flagged as findings.

The Public Accounts Committee is responsible for reviewing the audit reports from the Director of Audit. However, the committee is not meeting regularly and it is not issuing recommendations based on the reports. This substantial gap is classified as high risk and constitutes a red flag for the indicator. Many statutory bodies have not undergone an external audit recently.

There is no follow-up mechanism set in place to determine whether the recommendations of the audit reports were carried out. Whether the audit recommendations are implemented or not is subject to the review during the following audit round. There is no evidence that recommendations are responded to and implemented. No specific time frame is given to audited entities to act upon the recommendations issued. These gaps are classified as medium risk.

No information was given to the assessors to calculate the corresponding quantitative indicators.

The audit office is understaffed and does not have the capacity to carry out all needed audits, especially for statutory bodies. No written procedures exist for conducting procurement audits and there is no training programme established for auditors. While these gaps are classified as medium risk, understaffing constitutes a red flag as this issue lies outside the procurement sphere and cannot be mitigated directly or indirectly.

## **Recommendations**

It is suggested that Antigua and Barbuda adopt legal and / or regulatory provisions for internal audit. Guidelines could include compliance, efficiency and effectiveness risk assessments and controls, and could be accompanied by corresponding reviews from auditors to complete the control cycle. The experience of neighbouring countries and multilateral agencies would be very valuable to properly address these needs.

As has been mentioned in the PEFA report, it is necessary to reactivate the Public Accounts Committee so that follow-up of the reports of the Director of Audit are carried out. Attention could also be brought to statutory bodies, as they execute a large amount of resources and there is limited oversight of them.

The audit function could receive written procedures specifying the various aspects needed to review while performing an audit, including the actions that could be taken after the audit report is sent to the auditee, with a specific mention to timeframes for answering to and implementing the recommendations and follow-up mechanisms. Training on these procedures could be offered, following international best practices for auditing.



## 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.

Antigua and Barbuda does not have any current provisions for administrative procurement appeals. Red flags for this indicator are related to the lack of trust of suppliers with the administrative procedure established in the Procurement and Contract Administration Act, and the lack of timely remedies for procurement processes.

### Findings

The 2011 Procurement and Contract Administration Act, although not implemented, includes the possibility to file a complaint related to the award of a contract or the procurement process to the Ombudsman. The Ombudsman would be responsible for reviewing the complaint. There are no administrative appeals bodies foreseen in the 2011 Procurement and Contract Administration Act. In addition, challenges may be presented directly to the judiciary, namely to the Magistrates Court or High Court, depending on the value of the contract in question. The judiciary is not involved in any way in procurement decisions.

Further review is undertaken by the Court of Appeal of the Eastern Caribbean Supreme Court and the Judicial Committee of the Privy Council (JCPC) located in London. Both the Court of Appeal and the JCPC issue final, enforceable decisions.

According to the Tenders Board, there had not been any cases of litigation against central government related to procurement. The assessor identified one case of an appeal against a decision of a statutory body: ANTIGUA POWER COMPANY LIMITED V. THE ATTORNEY GENERAL et al. (HCVAP 2009/006).

The judicial process takes into account information relevant to the case, as presented first by the complainant and then by the parties involved, including the Attorney General. Decisions of the judiciary are rendered based on available evidence submitted by the parties. For the case of the statutory body, the Court of Appeal analysed the affidavit of one of the parties, among other evidences, as well as the JCPC.

The judicial process is not free. The fees are detailed in the rules and regulation, specific for each case.

The judicial procedure is clear and available, but it does not impose remedies. The decisions are binding for all parties and the court appears to be functioning and adequately staffed. The JCPC procedure appears balanced and unbiased.

In the case analysed (ANTIGUA POWER COMPANY LIMITED V. THE ATTORNEY GENERAL) one of the JCPC's reasons for admitting the appeal was the delay in the Court of Appeal (twenty-two months between the argument concluding in the Court of Appeal and the handing down of the judgment).

For cases under XCD 15,000 there are few written decisions. For cases that go to the Court of Appeal or the JCPC, the decisions are published online.

### Substantive gaps



There is no legal or regulatory provision currently establishing the procedure for administrative challenges and appeals. The 2011 Procurement and Contract Administration Act includes the possibility that a person file a complaint related to the award of a contract or the procurement process to the Ombudsman (Section 48). The Ombudsman would be responsible for reviewing the complaint. There is no procedure for appealing the decision of the Ombudsman.

Although they are not always satisfied with the decisions resulting from procurement processes, suppliers affirmed they do not complain in general because they are afraid of being blacklisted for future procurement. Furthermore, they do not have the necessary information available to review the evaluation and comment on it or other parts of the process. These aspects hinder the achievement of public procurement goals, because even if the Ombudsman complaints system was operating, suppliers would not trust this process; furthermore, although the 2011 Procurement and Contract Administration Act has been enacted but not yet enforced. As this cannot be mitigated directly nor indirectly, it is classified as high risk and assessors raise a red flag for this indicator.

The judicial process is not free; it does not impose remedies. From the single case analysed, a serious delay in the Court of Appeal is evident. This could significantly impede the main goals of public procurement and cannot be mitigated directly nor indirectly, and thus is classified as high risk and constitutes a red flag.

### **Recommendations**

Antigua and Barbuda could consider establishing legislation for administrative appeals. If the 2011 Procurement and Contract Administration Act is enforced, legal clarity could be established as to what happens if a decision of the Ombudsman is contested. Administrative appeals could be free. Procedures could be defined for the parties to be confident of how the case will be handled. These procedures could include the possibility of imposing remedies if necessary.

Recommendations from indicators 11 and 14, about opening up contract information and establishing a clear debarment procedure, would pave the way to build trust with the suppliers and allow them to complain if they need to, without the fear of being blacklisted for future procurement.

### **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.

Albeit with certain gaps, Antigua and Barbuda has several provisions enacted in legislation related to anti-corruption and prohibited practices. Several red flags are raised for this indicator including the operation and capacity of the Integrity Commission and Public Services Commission, the lack of civil society organisations to monitor procurement and the absence of secure mechanisms for reporting prohibited practices.

### **Findings**



Antigua and Barbuda's anti-corruption framework is established in the Constitution and in what is known as the Landmark Trilogy Act. This Act includes the Integrity in Public Life Act, the Prevention of Corruption Act and the Freedom of Information Act. It also establishes agencies such as the Office of the Director of Audit, the Integrity Commission, the Public Service Commission, the Office of the Director of Public Prosecutions and the Attorney General.

The Integrity Commission is responsible for enforcement of the legal framework, as well as for preventative and investigative aspects of the anti-corruption framework. The Office of the Director of Public Prosecutions is in charge of criminal prosecutions. The Office of the Attorney General Office is responsible for ensuring the legislative and administrative framework to control, combat and eradicate corruption. The Public Service Commission exercises disciplinary control over public officials and may remove them from duty.

Prohibited practices in procurement are defined and include bribery offenses. Penalties for public officials and private persons implied in offences described are included as well, including monetary fines, prison and exclusion from public service. In 2016, a consultant hired by the Commonwealth Secretariat created a draft procurement manual that develops explanations of prohibited practices and associated penalties.

A Code of Conduct is established as part of the Integrity in Public Life Act. However, this Act only applies to high-level officials and members of the Tenders Board, as included under its Schedule A. The fourth round MESICIC implementation report (2015) concludes that there is ambiguity in what is public disclosure. This disclosure would not be sufficient to address potential conflicts of interest.

The legal framework does not specify any instruction for incorporating provisions related to prohibited practices in the procurement documents. The tender documents reviewed by the assessors contained a standard clause on the topic. However, this clause leaves no action to be taken by suppliers and seems to be only of an informative nature. There is no evidence that this practice is widespread for all tender documents and contracts.

The proposed vendor registration form includes a clause stating that the company or its employees are not involved in illegal operations, and not be under investigation for any wrongdoing in Antigua and Barbuda and elsewhere. This clause is very broad in its scope as it relates to investigation and not actual punishment.

Legal obligations in the various acts do not establish a responsibility for any of the public procurement institutions to report suspicious activity, but avenues for reporting are defined.

There is no evidence that procuring entities are indeed reporting allegations of fraud or know the corresponding procedure. The answer shared by many of the interviewed persons is that in case of evidence of a prohibited practice related to procurement, they would inform the Financial Secretary. In addition, there is no evidence of a mechanism in place for identifying and mitigating corruption risks in the public procurement cycle, nor of special measures for the detection and prevention of corruption associated with procurement.

Disciplinary penalties are very few. The 2015 MESICIC report described that the Public Service Commission found some officials guilty of corruption acts, but they were not dismissed from duty, and were only asked to repay the stolen money and transferred to another institution.



There is lack of capacity of institutions such as the Integrity Commission which is understaffed and has not carried out investigations.

The Integrity in Public Life Act mandates persons in public life, including members of the Tenders Board, to disclose their financial information. This information is not disclosed for public scrutiny, which would in any case be difficult because it is provided on paper and not electronically. Other public officials that may be involved in public procurement in the requiring entities are not obliged to these disclosure requirements.

### **Substantive gaps**

The Integrity in Public Life Act which regulates conflicts of interest only applies to members of the Tenders Board and other high-level government officials. Other public officials including those that may be involved in certain procurement processes are not included under the scope of this act.

The cooling-off period for former public officials is established in the law but the provision is ambiguous and not bound in time. Disclosure of such situation by the public officials involved does not address the conflict of interest. This is gap classified as a medium risk.

There is a substantive gap because the legislation does not include provisions on prohibited practices in procurement documents. This is not addressed either in the new Procurement and Contract Administration Act. Although the tender documents reviewed contain information about prohibited practices, there is no request for action from the suppliers, asking them to abstain from such practices or sign a related commitment. There is no evidence that this provision is used in other procurement methods or enforced in contracts. This gap is classified as a medium risk.

The legislation establishes the possibility for the reporting of corruption allegations but does not state any requirement or procedure for procuring entities to report allegations of fraud or other prohibited practices. There is no evidence that procuring entities are reporting any allegation of prohibited practices. In addition, there is uncertainty among public officials regarding the procedure to do so.

There is no debarment system in place. Underperforming suppliers are debarred *de facto* with no due process and are excluded from further invitations to selective tendering or direct procurement in a manner that is completely at the discretion of the procuring officer.

Although the country has in place an anti-corruption framework with legislation and institutions with a clear level of responsibility, capacity of institutions such as the Integrity Commission is limited. This was admitted in the local media by its members recently when asked about the investigation of a former minister linked with a corruption case related to public contracts, when they stated that they “acknowledged that it does not have the staff or the resources to mount the investigation”<sup>23</sup>. The Integrity Commission has not undertaken investigations or pressed charges against individuals since being established in 2006. This indicates a substantive gap in the enforcement of penalties to punish fraud, corruption and other prohibited practices. The Public Services Commission seldom enforces disciplinary penalties completely. These gaps have been classified as high risk and, as the issues described in this paragraph cannot be mitigated directly nor indirectly, assessors raise a red flag.

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<sup>23</sup> <https://barbadostoday.bb/2018/06/16/antigua-investigation-commission-wants-to-probe-activities-of-former-minister/>



In line with the described gap concerning internal control mechanisms in Indicator 12, there is no evidence of a mechanism in place for identifying and mitigating corruption risks in the public procurement cycle nor of special measures for the detection and prevention of corruption associated with procurement. In addition, there are no statistics on corruption-related proceedings and convictions. Integrity training is not provided on a regular basis to the officials in charge of public procurement, increasing the risk of prohibited practices. These gaps have been classified as high risk and, as they cannot be mitigated directly nor indirectly, assessors raise a red flag.

There is an absence of civil society organisations that exist in the country with a focus on exercising social and audit control. The country has not adopted measures to promote an environment for civil society monitoring of procurement. Thus, integrity in public procurement is currently not being shaped by civil society. In a similar fashion, there is no evidence of support for integrity and ethical behaviour from the private sector and the local suppliers interviewed do not have internal compliance measures in place. These issues have been classified as high risk and, as they cannot be mitigated directly nor indirectly, constitute a red flag.

No secure, accessible and confidential channels are in place for reporting prohibited practices or unethical behaviour. Most of the persons interviewed, whether or not part of the government, would report a corruption case to the corresponding Permanent Secretary, but the procedure to do so is not formally established. A guarantee of confidentiality does not exist. In addition, there are no provisions to protect whistle-blowers.

Procedures and statistics are not in place to follow up possible disclosures. These disclosures would remain in the hands of the Permanent Secretary and any further report to other authorities would remain at his discretion, thus not allowing for a proper follow-up. These issues have been classified as high risk and, as they cannot be mitigated directly nor indirectly, constitute a red flag.

The Code of Conduct does not apply to all public officials. Only high-level officials and members of the Tenders Board are included in the scope of the Schedule A of the Integrity in Public Life Act. This code remains unknown to many public officials. Financial disclosure is not mandatory for all public officials that may be involved in public procurement. The financial disclosure forms are not accessible nor used by decision makers to prevent corruption risks throughout the public procurement cycle. These gaps are classified as medium risk.

## **Recommendations**

Legal reforms would be necessary to improve many of the gaps identified. Some provisions may be enforced by the use of soft law mechanisms such as guidelines. Provisions concerning conflicts of interest, the code of conduct and financial disclosure could be expanded to cover all public officials involved in public procurement. A clear procedure could be established for managing these conflicts, including for officials who have disclosed them. Cooling-off periods could be better defined. Clear time limits could be set. Financial forms could be used for assessing risks in procurement and for this, guidelines could be set for decision makers on how to properly use this information.

Legislation (or guidelines) could also have explicit information about how to incorporate provisions about prohibited practices into procurement documents. In any case, even in the absence of such legislation, the standard tender documents described in the recommendations of indicator 9 could include



appendixes for suppliers to confirm understanding and acceptance of provisions related to fraud, corruption and other prohibited practices.

Legislation, regulation or guidelines could include concrete information about what kind of prohibited practices public procurement officials might encounter, and how such activity would look in practice. A clear response procedure could be established, with actions, reporting lines and responsible stakeholders, removing discretion from Permanent Secretaries. The country could create confidential channels for denouncing, and whistle-blower protection.

If the new Procurement and Contract Administration Act is enforced, some gaps could be addressed in the regulation that could follow. A debarment procedure could be set up with a high level of priority and could be followed by the Procurement Board. No supplier should be impeded from participation if it has not been debarred through this procedure, which should have objective reasons to do so, and means of complaining or appealing these decisions.

The guidelines recommended in the sections devoted to indicators 10 and 11 could include section advising how citizens may participate in shaping integrity in public procurement, by means of audit and monitoring; and how suppliers could also take part in supporting ethical behaviour, by implementing measures such as internal compliance mechanisms. The latter could be supported by the associations that already operate in the state and could be part of the open dialogue between the government and the private sector.

The treatment of other gaps would require some level of resource allocation, such as providing integrity training for public officials; solving the understaffing in the Integrity Commission; maintaining statistics about corruption-related proceedings and convictions.

## 4. Consolidated Recommendations

Pillar I				
Enforce the 2011 Procurement and Contract Administration Act.	Publish the entire legal framework.	Address the gaps identified in the 2011 Procurement and Contract Administration Act.		
Pillar II				
Harmonise the procurement rules to budget and expenditure regulations.	Review and update the Procurement Manual to make it a handbook with guidelines.			
Pillar III				
Use electronic files for procurement processes and disclose awards.	Increase the use of competitive procedures, waivers only in	Streamline the management of payments and budget appropriation to	Engage suppliers in a dialogue with government and reconsider the	Study the separation of operative and regulatory functions at





	few, well-justified cases.	reduce the delay in payments.	approach of the supplier register.	the Procurement Board.
<b>Pillar IV</b>				
Raise awareness about basic aspects of procurement with the public.	Draft internal control procedures.	Improve capacities of the Public Accounts Committee, Audit Office, Integrity Commission and Public Services Commission.	Regulate a debarment system and enable remedies.	Train public officials on integrity topics and provide guidance.

An important recommendation is to enforce the 2011 Procurement and Contract Administration Act. The enforcement of this act is central to addressing a number of gaps across the public procurement system, from missing legal and regulatory provisions to procedures and institutional arrangements that follow from the law. Efforts to implement the 2011 Procurement and Contract Administration Act could be accompanied by measures such as the creation of model procurement documents, standard contracts and clauses and a procurement manual. The procurement manual could be revised to match the latest rules and practices.

An important aspect to consider in implementing the 2011 Procurement and Contract Administration Act is the institutional environment in support of such implementation. The Ministry of Finance and the Procurement Board could use the regulatory powers entrusted to them towards implementation. At the same time, there is some need to clearly designate the responsible institution that is in charge of driving the reforms. One factor in mobilising political support is to communicate the importance and impact of public procurement for the wider public across the government and beyond.

Additional recommendations aim at improving the public procurement legal and regulatory framework, which is likely a task for the medium term. Legal and regulatory reforms are needed to include provisions on a number of detailed aspects of the public procurement processes.

Part of the continued reform of the legal and regulatory framework could be to a) align it with international obligations, and b) evaluate to what extent inclusion of sustainable public procurement would be beneficial for Antigua and Barbuda’s context.

Additional aspects of the legal reform include to adopt rules for audit procedures as well as administrative appeals procedures. This could also include a reactivation of the Public Accounts Committee.

Some institutional arrangements could be part of continued reform efforts as well, aiming at clarifying the responsibilities and authorisations of contracting authorities and other institutions involved in public procurement, and considering increased centralisation.

In order to solve cash flow problems, Antigua and Barbuda could make it a priority to define procedures to align the procurement rules to the budget and expenditure regulations. Supporting procedures could



be created, such as an annual procurement plan and tools to report its execution. This is particularly important to ensure that suppliers are paid timely and continue to see benefit in engaging in business with the government.

Information technology could be an additional area of reform: it can support the reforms mentioned above and at the same time alleviate capacity constraints. Avenues for implementation of e-procurement could be explored, notably in regional cooperation. Attention could be paid to the possibility of using information collected in this system to analyse procurement performance.

Aside from changes to the legal and institutional framework, it is recommended that Antigua and Barbuda take measures to improve the actual implementation, performance and practices in the public procurement system. Measures could include structured training and other measures to support procurers in conducting procurement processes (such as supporting documents, trainings, etc.) In addition, Antigua and Barbuda could evaluate to what extent it could be beneficial to centralise procurement tasks to allow a smaller number of public servants to specialise in procurement and increase their capacity that way, while the remainder of the officers can focus on their substantive work.

In general, it could be beneficial for Antigua and Barbuda to render public procurement more open. This could include several dimensions, such as the involvement of the public in procurement processes (participation) as well as the publication of procurement documents (transparency). Increased engagement could be beneficial with regards to supplier relationships, where the approach to a supplier register could be reconsidered. Increasing transparency can in turn increase effectiveness as well as trust. This increased transparency could cover the entire public procurement system and the entire public procurement cycle, including planning, bidding, contract management, audit and appeals.

Finally, a dedicated effort could be devoted to improving the integrity framework. Aspects of this effort touch upon the areas mentioned above: strengthening the legal and regulatory framework, developing practical guidance and providing training, increasing transparency by providing more procurement information. Specifically, Antigua and Barbuda could consider adopting a code of conduct and procedures for managing conflict of interest, mechanisms to report wrongdoing and a debarment procedure.

## 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 Ministry of Finance and Corporate Governance in Antigua and Barbuda, CDB, and



academic procurement experts. From Antigua and Barbuda, the main focal point was Sean Cenac. 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 Antigua and Barbuda – 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.



## 6. 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 2015
- 2) Finance Administration Act 2006
- 3) Procurement and Contract Administration Act 2011
- 4) Tender Board Act 1991 and its 2002 Amendment
- 5) Tender Board Membership Act 2000
- 6) Integrity in Public Life Act 2004
- 7) Freedom of Information Act 2004
- 8) Prevention of Corruption Act 2004
- 9) Office of Director of Audit Act 2014
- 10) MESICIC 2015 report
- 11) Tender Guidelines Circular
- 12) Tender Threshold Circular
- 13) Tender Board Checklists and Formats
- 14) Documents drafted by the Commonwealth Secretariat consultant
- 15) Government of Antigua and Barbuda Medium Term Development Strategy 2015



## 7. Annex II: Interviewed Stakeholders

Type of institution	Name of Institution in the country	Name
<b>Institution in charge of the normative/regulatory function for public procurement</b>	Tenders Board, Ministry of Finance and Corporate Governance	Mr. Sean Cenac, Chairman Ms. Monique Benjamin, Secretariat, Tenders Board Mr. Whitfield Harris - Board Member Dr. Cleopatra Gittens - Board Member
<b>Selected number of procuring entities including state owned enterprises</b>	(a) Ministry of Works	Mr. Lucine Hanley, Director  Mr. Clarence Pilgrim, Permanent Secretary
	(b) Ministry of Information, Telecommunications, Broadcasting and Information Technology	Ms. Michele Michael Mr. Daryl Jackson
	(c) State Insurance Corporate (State Owned Enterprise) <i>State Insurance – Treasury Bldg Project</i>	Mr. Andre Knight - Dep. Gen. Manager
	(d) Medical Benefits Scheme (State Owned Enterprise) <i>Pharmaceutical Tenders 18-month cycle</i>	Mr. Andre Bovell Ms. Sandra Jonas
<b>Authorities responsible for budgeting and financial procedures</b>	Budget Office, Ministry of Finance and Corporate Governance	Mrs. Carolyn Charles-Tonge Gail Imhoff-Gordon, Financial
<b>Authorities in charge of internal and external controls and audits</b>	Financial Secretary Deputy Financial Secretary Deputy Director of Audit, Audit Department	Mr. Whitfield Harris Mrs. Rasona Davis-Crump Ms. Denise Hunte



	Internal Audit, Treasury Department	Dr. Cleopatra Gittens, Accountant General Mrs. Shireen Etinoff McAlmont
<b>Anti-corruption agencies</b>	Office of National Drug and Money Laundering Control Policy (ONDCP)	
<b>Public Service Commission</b>	Public Service Commission	
	Establishment Department	Ms. Bernadine James
<b>Representatives of private sector</b>	<b>Information Technology:</b>	
	<ul style="list-style-type: none"> <li>Antigua Computer Technology Ltd.</li> <li>Comnett Ltd.</li> <li>Massy Technologies InfoCom (Antigua) Ltd</li> </ul>	Mr. Solomon Doumith Mr. Gerard Shoul Mr. Akeele Ferris
	<b>Contractors:</b>	Ms. Sanka George
	<ul style="list-style-type: none"> <li>George &amp; George Construction</li> <li>Harrigan Building Construction</li> <li>CO Williams Construction</li> </ul>	
	<b>Auto Industry:</b>	
	Hadeed Motors Co. Ltd Harney Motors Caribbean Premium Motors Hazel's Garage	Mr. Robert Emmanuel Mr. Stephen Barnes Ms. Jeannette Bowery Mr. Hazelroy Barnes
	<b>Pharmaceutical Procurement:</b>	
	AS Brydens & Sons (ANU) Ltd.	Mrs. Eleisha Yetzer, Ms. Frances-Ann Minors
	<b>Interior Furnishings:</b>	
	Quality Electrical Sales and Services Mi Casa Imports Ltd	Mr. Eugene Benjamin Mr. Shane MacKay



<b>International development partners engaged in procurement in the country (if not already otherwise involved)</b>	<ul style="list-style-type: none"> <li>• Commonwealth Secretariat (technical assistance mission in 2016);</li> <li>• World Bank, short term technical assistance on review of Procurement and Administration Act in 2013;</li> <li>• Caribbean Development Bank/OECS Procurement initiative.</li> </ul>	
<b>Media</b>	Observer Media Group (print / radio)	Mrs. Caecilia Derrick
	Antigua and Barbuda Broadcasting Service (radio / television)	
<b>Non-governmental organisations</b>	Chamber of Commerce Employers Federation	Mr. Martin Cave Ms. Arlene Martin

