



MAPS | Methodology for Assessing
Procurement Systems

ASSESSMENT OF THE BRITISH VIRGIN ISLANDS' PUBLIC PROCUREMENT SYSTEM

2019



MAPS

Methodology for Assessing
Procurement Systems

British Virgin Islands

Assessment of the Public Procurement system

March 2019

Final Revisions May 2022

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Acronyms

BVI: British Virgin Islands

CDB: Caribbean Development Bank

CFATF: Caribbean Financial Action Task Force

ECLAC: Economic Commission for Latin America and the Caribbean

ECSC: Eastern Caribbean Supreme Court

FSC: Financial Services Commission

FSI: Financial Secrecy Index

GCCA: Global Climate Change Alliance

GDP: gross domestic product

GPO: Global Partnership for Oceans

IAP: Infrastructure Action Plan

JNCC: Joint Nature Conservation Committee

NDP: National Democratic Party

OECS: Organization of Eastern Caribbean States

RVIPF: Royal Virgin Islands Police Force

SDGs: Sustainable Development Goals

SLM: Sustainable Land Management

TIEA: Tax Information Exchange Agreements

TJN: Tax Justice Network

UN MSDF: United Nations Multi-Country Sustainable Development Framework

VIP: Virgin Islands Party



Executive summary

Although there is no specific legal framework for public procurement in BVI, procurers have developed good practices that allow the government to achieve a considerable level of effectiveness and efficiency in the public procurement system. However, legal certainty remains a challenge, given the lacking legal framework. While a functioning audit system is in place, there are generally challenges with regards to the integrity and accountability framework.

Pillar I

BVI does not have specific laws covering public procurement. A procurement act and a Handbook of Public Sector Procurement are currently available as drafts; those new rules are not yet approved. Standardised processes and instructions from the Ministry of Finance regulate procurement processes to a large extent, but substantive aspects in the MAPS assessment criteria remain unspecified, most notably direct purchases. Procuring entities use the Procurement Unit Procedural Manual. Like other documents in the legal and regulatory framework, this manual has never been issued officially.

There is no procurement policy that specifically addresses sustainable procurement guidelines or other international obligations. Laws and regulations do not include provisions in this matter.

Red flags were assigned to parts of this pillar.

Pillar II

The current legal basis for public procurement are the rules on public financial management. However, in practice, integration between the public financial management system and the public procurement system remain low: no detailed procedures exist that would regulate the financial aspects of public procurement, such as payments and procurement planning based on the available budget.

The normative and regulatory function in BVI is assigned to the Central Tenders Board. Most relevant responsibilities have been clearly assigned, but gaps persist in responsibilities related to procurement methods beyond tenders above the threshold. There is a risk that conflicts of interests might arise due to the lack of institutional separation between central purchasing responsibilities and the normative and regulatory function. The Central Tenders Board conducts purchases while also developing procurement policies. Procuring entities are not clearly defined; some centralisation initiatives exist that can be expanded.

Red flags have been assigned due to the lack of support for the public procurement process from information technology and given that the system does have a capacity to develop and improve. While minimal public procurement information is published, there is no information system in support of public procurement and no plans to implement e-procurement. BVI does not consider public procurement as a profession and there are no structured efforts to increase the capacity and professionalization of the procurement workforce, albeit it small. There is no performance monitoring.

Pillar III

The Procurement Unit is managing complex and large contracts, while other procurement processes are carried out by procuring entities. Direct purchasing is the main procurement method used. Some



challenges exist with regards to artificial splitting of contracts. Open tenders have standardised procedures and comply in general with international best practices, with several exceptions. There is a serious gap in record-keeping and many of the procurement files were lost after Hurricane Irma struck in 2017. Substantive gaps were identified in the planning and contract management stages. A red flag was raised because of the power that the cabinet has to overrule the technical decision of evaluators.

The private sector in BVI is relatively well organised and has access to the public procurement market. Companies take part in training sessions provided by the government. There are no formal dialogue mechanisms between the Government and the private sector. No sector strategies have been developed.

Pillar IV

Stakeholder engagement or oversight with regards to public procurement does not take place, due to a lack of transparency and interested civil society organisations. There are no formal dialogue mechanisms between government and civil society; and procurement documents are confidential.

BVI has a fully operational audit framework in place. Enforcement and follow-up on findings and recommendations, and the qualification and training of auditors to conduct procurement audits. Gaps were identified related to the lack of written procedures for internal audit. A red flag was raised because of the absence of regular external audit reports.

Challenges and appeals are handled through the judiciary. There are no remedies and no administrative complaints procedure, which warrants a red flag.

While BVI has some elements of an anti-corruption framework, gaps persist in relation to crucial aspects, such as conflict of interest management, incorporation of anti-corruption clauses in tender documents, debarment and whistleblowing. Red flags were raised because of the lack of effective sanctions, an incomplete anti-corruption framework, the absence of secure mechanisms to denounce prohibited practices, and the fact that there are no civil society organisations that can monitor and audit procurement.

Overview of compliance

| | | |
|-----------------------------|-----------------|--------------------|
| Substantial gaps identified | Gaps identified | Overall compliance |
|-----------------------------|-----------------|--------------------|

* Red flag raised

| PILLAR I | |
|---|--|
| 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations. | 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 * |
| 2. Implementing regulations and tools support the legal framework. | 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 |
| 3. The legal framework reflects the country’s secondary policy objectives and international obligations | 3(a) – Sustainable Public Procurement (SPP) * |
| | 3(b) – Obligations deriving from international agreements * |

| PILLAR II | |
|--|--|
| 4. The public procurement system is mainstreamed and well integrated into the public financial management system. | 4(a) – Procurement planning and the budget cycle * |
| | 4(b) – Financial procedures and the procurement cycle * |
| 5. The country has an institution in charge of the normative/regulatory function. | 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 * |
| 6. Procuring entities and their mandates are clearly defined. | 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 |



1. Introduction

According to estimates by international organisations, public procurement represents 7 to 20% of a country's gross domestic product. Often, this share is considerably higher in small island states such as the Virgin Islands. 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 the British Virgin Islands (BVI), using the new MAPS (2018). The assessment was led by the Ministry of Finance, with support by the Caribbean Development Bank (CDB) and implemented by the Organisation for Economic Cooperation and Development (OECD), with expert peer review from the CARICOM Secretariat, CDB, the UK Department for International Development (DFID) and the World Bank, who form the Technical Advisory Group (ITAG) for the project.

The assessment is part of a simultaneous assessment of five Eastern Caribbean States, Anguilla, Antigua and Barbuda, the British Virgin Islands, St. Kitts and Nevis and Montserrat. The primary objective of the assessment was to conduct a thorough, external assessment of the BVI'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 the BVI, by providing concrete recommendations that can be prioritised and presented in a detailed action plan.

In the last five years, partly as a result of the need to better maximise scarce resources in an environment of high debt and low growth, a significant number of Caribbean States have demonstrated that they are committed to public procurement reform programmes. This is evidenced by the passing of new procurement legislation in several countries and the planning of reforms in others. In these reform agendas, countries see benefit in cooperating regionally and sharing experiences. In this context, this MAPS assessment has a second function of serving as a testing exercise, applying the recently revised methodology for the first time in a small-island developing country context. This assessment was launched in the spring of 2018. The fact finding meetings were conducted in June 2018; a validation workshop was conducted in Washington, DC in September 2018. The project "dovetails" with a DFID funded, World Bank executed, procurement reform project covering Dominica, Grenada, Saint Lucia, and St. Vincent and Grenadines.



2. Analysis of Country Context

2.1. Political, economic and geostrategic situation of the country

According to CDB, in 2017, new business incorporations in the BVI increased by 2.6 %. However, the total number of BVI-registered companies at the end of 2017 was lower than the total at the end 2016, perhaps as a consequence of the natural disasters and increased scrutiny of offshore companies. Despite many companies being registered for legal purposes, due to scandals such as the “Panama Papers” and the “Paradise Papers”, the BVI was perceived as a tax shelter for many other companies.¹ Consequently, the British Parliament agreed on 1 May 2018 to introduce an amendment to the Sanctions and Anti-Money Laundering Bill to compel the Overseas Territories in the Caribbean, including the BVI, to adopt public registers of company ownership starting by late 2020.² This bill was enacted on 23 May, 2018, triggering a strong reaction in the BVI, where BVI’s Premier and Minister of Finance called a march on 24 May to protest what they considered an attempt to destroy their main economic source and to infringe on the constitutional rights of the people of the BVI.³

The BVI has had a considerable fiscal deficit since 2015, estimated for 2017 at 1.1% of GDP. The performance of the fiscal accounts was influenced in part by the natural disasters, causing most sources of revenue to decline.⁴

In terms of political structures, as an overseas territory of the United Kingdom, the BVI’s Head of State is the Queen and the Governor (Augustus Jaspert) is Her Majesty’s representative. The Governor manages the external affairs, defence, internal security, the civil service and administration of the courts, but does not actively participate in day-to-day governance.

Since 1967, the BVI has been responsible for its own internal affairs and since 2007 it has had a new Constitution. It establishes a ministerial system of government, led by a Premier (Orlando Smith), a Cabinet of Ministers and the House of Assembly. The government of the territory is fully responsible for all domestic laws and law enforcement and raises its own revenue.

The executive branch is composed of the Cabinet that includes: the Premier, the Ministers for Natural Resources and Labour; for Health and Social Development; for Communications and Works; for Education and Culture; and the Attorney General (non-voting member).

¹ Tax Justice Network, website: <https://www.taxjustice.net/2017/06/21/bvi-blagging-venal-income> (accessed 10 July 2018)

² The Guardian (2 May 2018) “MPs prepared to force Channel Islands and Isle of Man to reveal firms’ owners”, website: <https://www.theguardian.com/us-news/2018/may/02/cayman-islands-considers-legal-action-uk-public-scrutiny> (accessed 10 July 2018)

³ Government of the Virgin Islands, website: <http://www.bvi.gov.vg/media-centre/remarks-premier-and-minister-finance-decision-march-2018> (accessed 10 July 2018)

⁴ Government of the Virgin Islands, website: <http://www.bvi.gov.vg/media-centre/2018-budget-address> (accessed 10 July 2018)



The legislative power is represented by the House of Assembly, comprising 13 elected members (for a four-year term), the Attorney General, and the Speaker. The last election was held on 8 June 2015 and the main parties were the National Democratic Party (NDP) and the Virgin Islands Party (VIP).⁵

The judicial branch is based on the judiciary of the United Kingdom. Hence, the BVI is a member of the Eastern Caribbean Supreme Court (ECSC), which is considered the superior court and is composed of the High Court and the Court of Appeal. The Commercial division of the Supreme Court is known as the Commercial Court. The minimum value for a claim to be brought in this court is USD 500 000.⁶ There is also a Magistrate's Court, which is the court of lowest jurisdiction and deals with criminal matters, minor civil claims and family law matters. Appeal of decisions of the Magistrate's Court go directly to the Court of Appeal. The final court of appeal is the Judicial Committee of the Privy Council in London.

The BVI is considered a relatively safe place with moderately low crime levels. According to statistics from the Royal Virgin Islands Police Force (RVIPF), overall crime dropped 12% during 2017.⁷ Like other Eastern Caribbean countries, the BVI can be used as drug transshipment point from South America. Thus, the government has provided additional resources to law enforcement agencies, such as the RVIPF and Her Majesty's Customs, among others.

The BVI has laws on crimes such as securities fraud (2010 Securities Investment and Business Act, "SIBA"); money laundering (1997 Proceeds of Criminal Conduct Act, "PCCA"); drug trafficking (1993 Drug Trafficking Offences Act) and terrorism (2008 Terrorist Financing Code of Practice).⁸ On the other hand, the BVI has been criticised because there have been few money laundering convictions relative to the size and complexity of the financial sector.

There is an Office of Gender Affairs, which falls under the Ministry of Health and Social Development. Its mandate is to promote gender equality and equity for all, in accordance with the United Nations Convention on Elimination of All Forms of Discrimination Against Women.

Regarding international obligations, the BVI Constitution establishes that the Governor shall be responsible for conducting external affairs (section 60.4) and "separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the BVI, provided that general authority may be granted in specified matters to commence the formal negotiation of, and where it is deemed appropriate, to conclude any such treaty or international agreement" (section 60.5.a). Keeping that in mind, the BVI has negotiated and signed Tax Information Exchange Agreements (TIEA) with 28 countries such as Australia, Canada, China, France, Germany, United Kingdom and United States, among others. The main purpose of the TIEAs is to establish a formal regime for the exchange of information relating to civil and criminal tax matters.⁹

⁵ Caribbean Elections, website: http://www.caribbeanelections.com/elections/bv_elections.asp (accessed 10 July 2018)

⁶ Government of the Virgin Islands, website: <http://www.bvi.gov.vg> (accessed 10 July 2018)

⁷ BVI News, website: <http://bvinews.com/new/big-drop-in-murders-12-drop-in-overall-crime/> (accessed 10 July 2018)

⁸ Government of the Virgin Islands, website: <http://eservices.gov.vg/gazette/index.php> (accessed 10 July 2018)

⁹ Government of the Virgin Islands, website: <http://www.bvi.gov.vg/tiea> (accessed 10 July 2018)



Additionally, the United Kingdom is responsible for the BVI’s international affairs. It has extended some treaties to the BVI, such as the following: the UN Convention against Corruption in 2006; the International Convention for the Suppression of the Financing of Terrorism in 2012; and the UN Convention against Transnational Organized Crime, also in 2012.¹⁰

The BVI participates in the following international organisations, as a member, observer or associate:

| Organisation | Type |
|---|-----------|
| Caribbean Financial Action Task Force (CFATF) | Member |
| Caribbean Development Bank (CDB) | |
| Organisation of Eastern Caribbean States (OECS) | Associate |
| United Nations Educational, Scientific and Cultural Organization (UNESCO) | |
| Caribbean Community (CARICOM) | |

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

Due to a lack of publicly available data, the precise volume of public procurement in the BVI, as a share of GDP or government expenditure, is not known. Nevertheless, public procurement is an important part of the budget as highlighted in the 2018 Budget Address submitted to the BVI’s Assembly for budget approval. The 2018 Budget Address highlights the need to improve the public procurement system to strengthen fiscal governance.

The Ministry of Finance, particularly the Financial Secretary, is responsible for public procurement in the BVI. There is a Central Tenders Board with five members, including the Financial Secretary, the Attorney General, two Permanent Secretaries (of Ministries) and the Director of Public Works. The secretary of the Central Tenders Board is the Procurement Coordinator who heads the Procurement Unit.

There is no specific law on public procurement in the BVI; a draft is currently being discussed. Current rules are included in the Public Finance Management Act and a number of rules have been developed outside of the legal framework. The Central Tenders Board handles tenders above the threshold of USD 100 000. The board receives, evaluates and rejects bids through recommendations to Cabinet, which takes the formal decision. In 2016, 13 contracts were handled by the Central Tenders Board. Procurement below USD 100 000 does not require a tender process and can be approved by the Financial Secretary.

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

¹⁰United Nations Treaty Collections, website:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&clang=_en
(accessed 10 July 2018)



Multilateral organisations are key players in the public procurement system, particularly the CDB and, the Organisation of Eastern Caribbean States (OECS). As in most states in the region, procurements funded by multilateral development banks are ruled by the regulation of the agency funding the project.

The BVI has not undergone an official PEFA assessment. However, CARTAC conducted a preliminary analysis based on the PEFA indicators in 2015.

2.3. National policy objectives and sustainable development goals

The BVI is part of the United Nations Multi-Country Sustainable Development Framework (UN MSDF) that supports the realisation of the Sustainable Development Goals (SDGs) under the internationally agreed 2030 Development Agenda.¹¹

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

- *A sustainable and resilient Caribbean.* One of the main goals that the BVI wants to promote is Goal 14 (Conserve and sustainably use the Oceans, Seas and Marine Resources for Sustainable Development). That is why the BVI government has a Natural Resources and Climate Change Action Plan.¹² The BVI also joined the Global Partnership for Oceans (GPO), under the auspices of the World Bank with the objective of advancing sustainable fisheries, conserving the coastal and the marine environment and reducing ocean pollution.

The Ministry of Natural Resources and Labour and the UK Joint Nature Conservation Committee (JNCC) began overseeing a study on the total economic value of the natural resources that includes their values related to tourism and economy.

With regards to international programmes that combat climate change issues through Sustainable Land Management (SLM), it is worth mentioning the iLand resilience project, which is funded by the European Union through the Global Climate Change Alliance (GCCA) and the OECS.¹³ In the BVI, this project includes an operational plan for the Climate Change Trust Fund, drainage works in Brewers Bay and sewerage retrofitting in Cane Garden Bay.

- *A safe, cohesive and just Caribbean.* The main purpose of this priority area is to strengthen the capacities of public policy and rule of law institutions and civil society organisations; and to reinforce the equitable access to justice, protection, citizen security and safety. In line with this topic, grievances arising from the administrative action of any government agency are addressed by the Complaints Commission.
- *A healthy Caribbean.* This priority area consists in guaranteeing universal access to quality health care services and improved systems.

¹¹ United Nations Caribbean, website:

<http://www.2030caribbean.org/content/unct/caribbean/en/home/MSDF/overview.html> (accessed 10 July 2018)

¹² Government of the Virgin Islands, website: <http://www.bvi.gov.vg/climatechange> (accessed 10 July 2018)

¹³ Government of the Virgin Islands, website: <http://www.bvi.gov.vg/media-centre/iland-resilience-drainage-project-helps-save-road-flood> (accessed 10 July 2018)



- *An inclusive, equitable and prosperous Caribbean.* The Convention on the Elimination of all forms of Discrimination against Women has been extended to the BVI and it is a tool to achieve the goals related to this priority area. Moreover, the BVI has a National Gender Policy that promotes the use of a gender perspective throughout the policymaking process. Regarding education, the Government of the BVI has made significant investments that have increased enrolment rates and universal access to primary and secondary education.¹⁴

In summary, the BVI has been working to comply with the SDG. According to ECLAC, although implementation has remained slow because of a lack of a national institutional framework, the BVI is well placed to achieve 50 % of the SDG indicators.¹⁵

A Recovery and Development Strategy was drafted for 2018-2020, to address the issues arising after the hurricanes hit the island in 2017. The main goal of the strategy is to make the BVI more resilient. The strategy's social perspective considers three aspects: 1) quality health, wellbeing and social services; 2) quality education; and 3) gender equality. These aspects include development of health infrastructure, assistance to vulnerable persons, disaster waste recovery and debris management, rebuilding of education infrastructure, and collection of gender-disaggregated statistics across all policymaking areas. The assessors could evidence the great amount of debris that was present in the island of Tortola during the fact-finding mission more than nine months after Hurricane Irma struck.

The strategy's economic perspective includes a stable and growing economy, strong infrastructure and efforts to minimise economic inequality. The infrastructure component includes public utilities and repairing the road network, 70% of which was damaged by the 2017 storms.

The environment perspective comprises the effective management of natural resources and natural environment; strategic physical development; and hazard risk reduction and adaptation to climate change. The Department of Disaster Management and the Ministry of Education have included the "SMART" (Sustained Mitigation, Adaptation and Resilient Techniques) approach when undertaking projects for improving school buildings.¹⁶

The strategy's direction and governance perspective includes safety for all persons, effective governance, and international relations. Two of the main actions are the creation of the Recovery and Development Agency, and the plan to rebuild government facilities that were damaged by the storms, especially those of the Magistrate's Court, High Court and the Judges' residences.

¹⁴ Government of the Virgin Islands, website: <http://www.bvi.gov.vg/services/national-gender-policy> (accessed 10 July 2018)

¹⁵ ECLAC, website: https://www.cepal.org/sites/default/files/events/files/2018_cdcc_27_implementation_of_the_2016-2017_programme_of_work.pdf (accessed 10 July 2018)

¹⁶ Government of the Virgin Islands, website: <http://www.bvi.gov.vg> (accessed 10 July 2018)



2.4. Public Procurement Reform

The BVI is part of the regional movement to further public procurement reform which several neighbouring OECS Caribbean states have already embarked on. Up to now, the BVI has not amended, reformed or otherwise modified the legal framework contained in the Public Finance Management Act of 2004 and in Part 27 of the Public Finance Management Regulations (2005). Stakeholders reported that in July 2018, the Cabinet approved the draft of the new Public Procurement Act for the Virgin Islands. However, the House of Assembly has not approved the law yet; in order to do so, the Government has to submit a bill to the House of Assembly. From a substance perspective, the draft law is complete. However, the format of the draft law diverges from the way laws are usually written in the BVI. This has been an obstacle to discussing and approving the draft, before it can be submitted before the House of Assembly.

In 2014, the Caribbean Development Bank conducted a MAPS-based assessment of the BVI (MAPS methodology from 2010). The recommendations concerned mostly the legal framework, including:

- drafting and approving a “stand-alone” Procurement Act, and the regulation thereof;
- updating and approving the Handbook of Public Sector Procurement (within the Regulations);
- establishing clear criteria that justify waiving the tendering process;
- create and manage a register of suppliers which prequalifies and grades based on capability;
- establish a complaints review mechanism for procurement;
- develop standard model documents and templates for the preparation of tenders, preparation of proposals, solicitation notices and publication of contract awards;
- prepare training materials and provide training to staff of Government Ministries and suppliers and consultants;
- reviewing the duties and responsibilities of the procurement coordinator and the procurement unit;
- restricting the use of selective tendering; and
- developing fraud and anti-corruption provisions.

In 2015, following a report from the BVI Public Accounts Committee and the Auditor General that evaluated the BVI’s public procurement system and analysed the 2014 MAPS report, the BVI requested a report from CDB, insisting in the need of a stand-alone public procurement act. As noted above, the current report was developed in the context of a simultaneous assessment of five Eastern Caribbean States, and also served as an opportunity to pilot the revisions to MAPS undertaken from 2015-2018 in small states/island context.

Despite of the fact that the BVI has not amended the public procurement legal framework to comply with international standards and best practices, the 2018 Budget Address contains references to the proposed legislation to strengthen fiscal governance, particularly procurement. Procurement references are linked to (i) efficiency and effectiveness from a fiscal perspective; (ii) transparency and competitiveness in the procurement process; (iii) confidence through transparency, objectivity and predictability of the outcomes from the perspective of the market; (iv) need of training from a commercial perspective; and (v) need of training from the auditor perspective.

It appears that the BVI understands the strategic value of public procurement systems in terms of expenditure and delivery of public goods to citizens. Therefore, it is of utmost importance to (i) find



incentives within the Government to drive the reform, (ii) adjust the draft of Public Procurement Act for the Virgin Islands to be consistent with the format used in the BVI, (iii) include the recommendations made in this MAPS assessment, (iv) prepare the correspondent bill and pass it to have in place the new Act, (v) issue the Handbook of Public Sector Procurement, and (vi) establish indicators to monitor the results and effects of the implementation.



3. Assessment

Overview of compliance

Substantial gaps identified Gaps identified Overall compliance

* Red flag raised

| PILLAR I | |
|---|--|
| 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations. | 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 * | |
| 2. Implementing regulations and tools support the legal framework. | 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 |
| 3. The legal framework reflects the country’s secondary policy objectives and international obligations | 3(a) – Sustainable Public Procurement (SPP) * |
| | 3(b) – Obligations deriving from international agreements * |

| PILLAR II | |
|--|---|
| 4. The public procurement system is mainstreamed and well integrated into the public financial management system. | 4(a) – Procurement planning and the budget cycle * |
| | 4(b) – Financial procedures and the procurement cycle * |
| 5. The country has an institution in charge of the normative/regulatory function. | 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 * |
| 6. Procuring entities and their mandates are clearly defined. | 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 the payment of invoices, conflict of interest, and the management of procurement data, no quantitative data was provided to assess the quantitative assessment criteria. This suggests that further efforts to collect, manage and publish quantitative data on



the procurement system may be warranted to promote transparency and support analysis of the performance of the public procurement system in the British Virgin Islands.

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.

Currently, the BVI does not have specific laws covering public procurement. Standardised processes and instructions from the Ministry of Finance regulate procurement processes to a large extent, but substantive aspects remain unspecified, most notably rules on direct purchases. A procurement act and a Handbook of Public Sector Procurement are currently available as drafts. These, as new rules are not yet approved. Procurement entities use a Procurement Unit Procedural Manual. However, this manual has never been issued officially.

The assessment of this pillar is conducted under consideration of the enacted regulations; some recommendations are related to the enactment of the Public Procurement Act, when gaps are addressed by the proposed regulations.

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.

There is no specific law on public procurement in the BVI; a draft is being discussed at the moment. The current legal framework for public procurement is included in the Public Finance Management Act. The majority of rules have been developed outside of the legal framework. Several provisions outlined by the assessment criteria have not been specified in the legal framework. This is problematic with regards to legal certainty because laws, acts and decrees are meant to be permanent, while regulations have a more administrative nature, and may be more easily amended.

Findings

There is no specialized law for public procurement in the BVI. Laws and regulations covering this matter are included in the regulatory framework for public financial management. The Public Finance Management Act of 2004 can be considered the most important law in this matter. The Act does not include specific provisions on public procurement, but it grants the Executive Council with powers to adopt specific regulations, including the appointment of a Tenders Board and the regulation for the procurement of goods and services by the Government¹⁷. Part 27 of the Public Finance Management Regulations, adopted in 2005 under the title “procurement of stores and services”, created the Central

¹⁷ British Virgin Islands. Public Finance Management Act. 2004. Regulation 44, Section 1, subsection b



Tenders Board, which is supported by the Ministry of Finance and which has developed guides and formats that are used in the procurement process.

Rules are general and only establish thresholds to determine the responsible entity for the procurement process (procurement over USD 100 000 are to be conducted by the Ministry of Finance), but they are not related to differences in the nature of the goods or services to be procured.

The legal framework covers goods, works and services. There is no provision regarding other forms of public contracting such as PPPs or concessions.

The legal and regulatory framework is accessible online; however, more detailed rules are harder to find. Laws are available and easily accessible online¹⁸. Regulations on the other hand, are only accessible via the Public Gazette, which has a more restrictive platform without a search engine.

The Public Finance Management Act of 2005 states that government procurement should be undertaken by tender, direct purchase or otherwise (Section 44(1)(b) of Part VII). Further, Part 27 of the Virgin Islands Public Finance Management Regulations of 2005 refers to tenders and direct purchases as the methods of public procurement.

According to stakeholders, in addition to direct purchases (sole source acquisitions), procurement authorities in some cases request quotations and compare them to award contracts not subject to tender. In addition, the Cabinet may grant a waiver to avoid the tender process when requested and justified by the Minister in charge of the specific procurement process. The assessors did not find the legal provisions establishing waivers.

Procurement of less than USD 100 000 does not require open competitive tenders. For non-competitive processes, the regulations provide for three ranges (i) up to USD 10 000; (ii) between USD 10 001 to USD 20 000; and (iii) USD 20 001 to USD 100 000. The procurement without competition in cases (ii) and (iii) requires approval by an official who is held accountable. However, there is no specification on the terms to request it.

The legal framework does not provide for a clear statement that forbids fractioning of contracts to avoid competition.

The legal framework includes some provisions related to procurement procedures, such as requirements for publication and deadlines. In addition, the Procurement Unit of the Ministry of Finance designed forms that can be used in order to publicise tenders. The Procurement Unit has also defined some minimum terms that must be respected (see indicator 2). However, there are no distinctions related to the complexity of the procurement procedure and no clear rules about the minimum time between the call for proposals and its submission. There is no obligation to advertise procurement opportunities related to acquisitions below USD 250 000.

Procurements valued below USD 250 000 may be restricted to domestic suppliers unless the BVI does not have qualified suppliers. Bearing in mind that the registry at the Central Tenders Board is not fully operational, it is not clear how to establish the existence or not of such experienced suppliers.

¹⁸ Public Finance Management Act. 2004 can be accessed through:
<http://www.bvi.gov.vg/sites/default/files/resources/Public%20Finance%20Management%20Act%202004.pdf>



Foreign firms can participate in tender procedures and special methods are put in place to grant them access to tendering documents.

In terms of eligibility, there are no rules for specific requirements. It is a responsibility of the Central Tenders Board to determine eligibility requirements. The draft Handbook of Public Sector Procurement, to be issued with the new regulation, specifies the minimum information to be included in the tender notices. In some cases, a Ministry or Department may request the pre-qualification of tenderers. The terms for pre-qualification are defined specific to each case.

There are no rules for participation of state-owned enterprises to create the same conditions among participants in a tender process. However, the Director of Projects indicated that the Statutory Bodies of the BVI do not offer goods, works and services to the Government.

The legal framework does not provide rules to exclude participants involved in criminal activities nor administrative debarment process.

The Central Tenders Board is responsible for the evaluation and awarding of contracts for competitive tenders. There is a sub-committee with specific responsibilities and procedures for that matter. This sub-committee is formed by specialized personnel, who each individually perform an assessment that is later consolidated with the individual evaluations of the rest of the committee. Further notifications to the Committee and the Financial Secretary are ordered prior to the adjudication of the contract.

Notwithstanding the above, there are no documents that detail the precise process to be followed when determining and applying evaluation criteria. For example, there is no obligation to define the relative weight among different criteria or an obligation to consider the quality of the goods and services to be procured and that it shall be included in the terms and conditions for each tender process.

The procedure for opening the tenders is regulated in detail in the Procurement Unit Procedural Manual. It includes the registry of information such as the non-responsive tenders.

Currently, as explained in detail in indicator 13 below, there is no legal or regulatory provision that establishes the procedure for administrative challenges and appeals decisions during the procurement process.

The contents of the contract are set by regulation 185 of the Public Finance Management Regulations. The contract must specify terms for its management, for example, the commencement and completion dates; the detailed specifications of the goods to be supplied or the work or service to be performed and any other condition to be required.

In terms of contract variations, regulation 187 of the Public Finance Management Regulations specifies that a contract can be modified with cost variation with the approval of the accounting officer, if the variation from the original contract value is under 10%; from the Financial Secretary if it is between 10 and 15%, and from the Minister when it is no less than 15%. Contracts of less than USD 100 000 cannot be modified if the new value of the contract exceeds USD 100 000.

There are no general rules for timely payment. Only in some cases of centralized procurement, such as vehicles and photocopiers, procuring entities are required to notify the Central Board of the reception of the acquired good to proceed with the payment on time.



Purchases valued at USD 10 000 or less may be conducted through a works or service order. In these cases, no formal procurement contract is required (regulation 189).

With regards to dispute resolution during the performance of the contract, it should be noted that since there is no appeal instance (indicator 1, sub-indicator h, and indicator 13), or a procedure to resolve disputes within the entity responsible for the contract, the terms of the contract have to define the dispute resolution mechanism.

The BVI's legal framework does not consider e-Procurement solutions to conduct the procurement process.

The assessors did not find evidence of a regulation on the safekeeping of records, document retention policy and security protocols to protect records in the area of public procurement. According to stakeholders, the general regulation on national archives applies to procurement records as well. However, the assessment team was unable to locate and review this regulation.

Substantive gaps

While many processes are following established practices, a large share of these rules are not found in the legal and regulatory framework. With the absence of a standalone law on public procurement and no additional rules, several substantive gaps were identified and the indicator was classified as overall medium risk:

- Rules for direct purchasing. Laws and regulations focus on tendering, which means that there are no rules for other procurement methods.
- Definitions of principles or guidelines related to award criteria, advertising timeframes, eligibility and exclusion of tenderers, among others. In most cases, regulations allow this matters to be defined on a case-to-case basis, without defining a minimum standard.
- Challenge and appeals mechanism. Currently, no procedure exists to resolve a conflict in the procurement process and during the contract management stage.
- Absence of detailed specifications in the legal framework with regards to the contract management stage, such as a dispute resolution mechanism and rules for contract modifications.
- E-Procurement tools to support the procurement process
- Rules and procedures for the safekeeping of the information related to the tendering process.

The absence of these rules from the legal and regulatory framework can result in less certainty for all actors in the public procurement processes – procuring entities, procurers and suppliers. In turn, this situation can erode trust in public institutions, as the basis for their actions are not clear to citizens.

Red flags were raised for a number of the sub-indicators, including the scope of application and coverage of the legal and regulatory framework, the rules on participation and contract management, which represent obstacles that might jeopardise the achievement of basic public procurement objectives.

Recommendations

Reiterating previous assessments, the main recommendation is to adopt the draft of the Public Procurement Act for the Virgin Islands and issue the draft of Handbook of Public Sector Procurement. Many of the identified gaps would be addressed by those regulations, which are not applicable currently.



Some of the identified gaps that are not directly addressed by the proposed act, such as rules for PPP's or the adoption of procurement principles in specialized legislation could be subject to an evaluation of needs, with a view to develop a legal or regulatory basis where necessary.

Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. This indicator is divided into 4 sub-indicators.

Tools and regulations, including some standard documents and the Procurement Unit Procedural Manual have been developed to support the implementation of public procurement. However, not all aspects of public procurement are covered in this manual, notably rules with regards to direct purchases.

Findings

As described in indicator 1, in the absence of a dedicated law for public procurement, public procurement procedures in the BVI are largely directed by regulations and guidance outside of the body of law. Regulations that exists are clear. Most importantly, there is a Procurement Unit Procedural Manual detailing procedures for public procurement. While this manual has never been issued with any official or formal status, it has been used widely by contracting authorities. In addition, the Government drafted a Handbook of Public Sector Procurement which has three volumes (i) procurement policy and general procurement procedures; (ii) procedures for the procurement of goods, works and non-consulting services; and (iii) procedures for the procurement of consulting services. This handbook is supposed to be issued together with the adoption of the revised legal and regulatory framework.

It is important to note that most regulations, including the Procurement Unit Procedural Manual, are related to tender procedures only; there are no regulations for the direct purchasing processes.

The Procurement Unit in the Ministry of Finance has developed a wide range of procurement documents, including tender notices and communication to be issued during the procurement process. These documents have helped standardize the acquisition procedure. However, these documents do not comply with international standards in specifying the procurement requirements. The Procurement Unit is keeping these standards up to date.

The Procurement Unit has prepared guides for contract management, in form of documents that the responsible entity must complete in order to verify the conditions of the good or service that is delivered.

Substantive gaps

The substantive gaps identified are related to the absence of standard contracts and clauses. The absence of these documents results in large discretions and therefore uncertainty in the public procurement process. In addition, the repeated creation of contracts requires time and creates inefficiencies. As a result of these gaps, the indicator was classified as medium risk. The Procurement Unit has developed many documents but there is an opportunity to develop more comprehensive documents, covering all procurement methods, including direct purchases.



As they could significantly impede the main goals of public procurement, red flags were raised related to the implementation of regulations to define processes and procedures and standard contract conditions.

The Recovery and Development Agency (RDA) issued a separate manual in early 2019. This manual applies to all procurement conducted in connection with the recovery after hurricanes Irma and Maria. While this is a specific focus of application and does not relate to the procurement system as a whole, substantial procurement volumes are expected to be channeled through the RDA, which underlines its importance. The manual is detailed and provides overarching principles, as well as detailed guidance for a number of procedures.

Recommendations

The main recommendation is to adopt the draft of Public Procurement Act for the Virgin Islands and issue the draft of the Handbook of Public Sector Procurement. The Handbook addresses almost all of the aspects covered under Indicator 2.

In addition, the Procurement Unit could evaluate the need for additional standard documents, contracts and clauses. For both tasks, an exchange with procuring entities on their challenges could be undertaken, as well as a consultation with suppliers responding to tenders.

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. The indicator is broken down into two sub-indicators (a-b), which are individually assessed as follows.

Findings

There is no procurement policy that specifically addresses sustainable procurement or international obligations. Laws and regulations do not include provisions in this matter.

Substantive gaps

Given the lack of provisions related to sustainable procurement and international obligations, this indicator is not met and these gaps were classified as high risk and red flags were raised.

Recommendations

The BVI might consider including provisions related to sustainability in the legal and regulatory framework. Inclusion of sustainable criteria in procurement supports efforts to (i) control emissions of greenhouse gases; (ii) improving the water usage; (iii) energy efficiency; (iv) air, water and soil pollution; (v) waste reduction; (vi) sustainable agriculture; and (vii) control deforestation. 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.



In addition, the BVI could review and identify any obligations derived from international agreements, and amend the draft Procurement Act accordingly.

In implementing changes, the BVI could consider the impact of two aspects: a) the need to align the procurement system with overarching goals and international obligations, and b) the transaction costs for making these changes. In determining an implementation strategy, both sides should be evaluated carefully and balanced prudently.

3.2. Pillar II - Institutional Framework and Management Capacity

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

Public procurement is currently regulated through the rules on public financial management; however, integration in practice remains low as no detailed procedures for public procurement exist, such as relating to payments and procurement planning.

While the normative and regulatory function has been clearly assigned, there are risks of an institutional conflict of interest as the Central Tenders Board conducts purchases while also developing procurement policies. Procuring entities are not clearly defined; some centralisation initiatives exist that can be expanded.

Red flags have been assigned due to the lack of support for the public procurement process from information technology and given that the system does have a capacity 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.

The legal framework of the BVI is contained in the financial management regulations but there are no specific financial procedures for procurement.

Findings

Some principles of public financial management are established in the BVI's constitution, such as the principle of consolidated funds and the obligation to develop an annual estimate of income and expenses. Building on these obligations, the Public Finance Management Regulations establish that a sum of regular and capital expenditure must be communicated each year to the Ministry of Finance with a forecast of expenditure for the next two years. The regulation also establishes principles for planning, including (i) that public funds must be spent to the best advantage; (ii) that services no longer needed are eliminated and (iii) that each necessary service is provided at the lowest cost possible.

There are no provisions for financial planning and budgetary expenses specifically with regards to the procurement process; expenditure is regulated with general rules that do not consider the particular



stages and requirements of a procurement process. The Procurement Unit Procedural Manual includes a provision to complete purchase orders in centralised procurement.

Substantive gaps

While there is a general planning principle and a budgetary procedure, these procedures are not transferred to the public procurement process and no obligations or procedures with regards to the public procurement process are defined. Expenses are treated as a broad category; there is no itemised approach, especially regarding those expenses related to procurement.

There are no financial management procedures for the procurement process. There are no rules linking procurement activity to financial management or financial planning.

The legal and regulatory framework does not contain financial procedures or principles to be considered when organising a public procurement process. This is problematic as ambiguity over procedures results in uncertainty for suppliers and public officials, and can potentially create opportunities for corruption. As a result, these gaps were classified as high risk and red flags were raised related to procurement planning and the budget cycle and financial procedures.

No information was available to assess the quantitative indicator (share of invoices paid on time.)

Recommendations

It is recommended that the BVI define specialized procedures for annual or multiyear planning in procurement, as well as mechanisms to follow up on spending. In addition, the BVI could develop procedures for processing invoices and authorising payments to establish clear expectations for all parties involved in the public procurement process. In addition, the BVI could refine the feedback mechanism for budget execution, to increase visibility about how and whether public funds are adequately spent.

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

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

Most relevant responsibilities have been clearly assigned, but gaps persist in responsibilities related to procurement methods beyond tenders above the threshold. A conflict of interest might materialise in the lack of institutional separation between central purchasing responsibilities and the normative and regulatory function.

Findings

The Public Finance Management Act of 2004 states that the Executive Council may regulate any aspect of this Act, following advice of the Financial Secretary. This includes the appointment of a Tenders Board for the procurement of goods and services whether by tender, direct purchase or otherwise (Section 44(a)). The Public Finance Management Regulations of 2005 (Part 27) state that the Financial Secretary, with the approval of the Minister of Finance shall issue directions regarding procurement of goods and services by



tender or direct purchase bearing in mind that procurement exceeding USD 100 000 shall be procured by tender, unless the Executive Committee directs otherwise.

The BVI's Public Finance Management Act creates a Tenders Board as a centralized body to undertake tenders across the government. The regulations are not very specific in terms of the regulatory powers but it states that the Financial Secretary with the approval of the Minister of Finance shall issue directions in respect to procurement of goods and services by tender or direct purchase.

The Central Tenders Board has developed some responsibilities as a normative/regulatory body, including activities such as providing advice for procurement as the entity in charge of tendering procedures. In addition, the Central Tenders Board conducts monitoring and reporting activities related to public procurement. However, those reporting activities are a result of the central tendering model, not a consequence of a clearly established normative/regulatory body. They do not apply for direct purchases.

The Central Tenders Board is an entity created by law, under the close supervision of the Financial Secretary. There are no specific regulations relating to its funding. Personnel, on the other hand, is defined in the regulations; board members include the Financial Secretary; the Attorney General; the Director of Public Works; a Permanent Secretary of the Ministry responsible for the purchase; and a Permanent Secretary from another Ministry. Also, the Board can call a technical committee.

A substantive gap relates to the existence of an institutional conflict of interests of the Central Tenders Board: The board has responsibilities to both conduct tenders and to monitor them. Without adequate measures to hedge for a conflict of interest materialising, this arrangement is problematic.

Substantive gaps

The substantive gaps identified are related to the lack of definition in some responsibilities that a normative body could have according to the assessment criteria, including:

- training,
- developing an information system, and
- supporting the professionalization of procurement.

Another gap is the potential conflict of interest between the regulatory and the tendering function of the Central Tenders Board.

These gaps were classified as medium risk, with red flags raised specifically related to the assignment of responsibility for issues such as the monitoring of public procurement, the provision of information and professionalisation, as well as potential conflicts of interest.

Recommendations

The above-mentioned substantive gaps could be addressed as part of the general reform process towards adopting a specific public procurement legal framework. In updating the draft act, the BVI could evaluate the needs for further specifying the roles and responsibilities of the institutions involved in public procurement. In doing so, care should be taken to separate responsibilities to reduce a potential conflict of interest.



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. There are two sub-indicators to be assessed.

Procuring entities are not clearly defined. Most responsibilities are assigned to the Central Tenders Board, which conducts some aggregated purchasing aside from managing processes for other entities.

Findings

The BVI's legal framework for the Central Tenders Board as a centralized body in charge of all procurement procedures for goods or services valued at more than USD 100 000. There is no other entity with powers to conduct tenders in this range. Exceptions exist; waivers to a centralised tendering procedures are granted.

Below the threshold, the procuring entities are in charge. In the different institutions, the General Accountant in the institution is in charge of procurement. These procurements are usually direct purchases.

While the management of large purchases is centralised, there is limited aggregation or consolidation of demand across the BVI's administration. Only the procurements of cars and photocopiers are centralized in that sense. The regulations clearly establish the procedures to be performed by the centralised body.

Substantive gaps

A substantive gap is the absence of rules that define procuring entities other than the Central Tenders Board. This is a consequence of the fact that the existing regulations specify procedures only related to tendering processes, not processes related to direct acquisitions that are performed by many more entities. Another gap is the absence of a centralised procurement policy. Some procedures are conducted centrally, but the regulations are not clear about how these processes could be performed.

Specifying both procuring entities and rules on central purchasing in the legal and regulatory framework can contribute to making the public procurement system clearer to the administration, suppliers and civil society. Such rules are important to establish clear expectations and authorisations, ensuring a process without ambiguities. As a result, these gaps were classified as medium risk and red flags were raised related to the lack of a clear policy on centralised procurement.

Recommendations

The legal and regulatory framework that is currently being updated could include specifications about procuring entities, i.e. rules specifying which entities are authorised to purchase what and using which process. Notably, direct purchases could be regulated, as stated above. Organisational requirements could be taken into account; minimum requirements for capacity and knowledge could be included.

In addition, BVI could define a policy on aggregation of procurement. To do this, the government could evaluate the possibility to conduct more central procurement. For example, goods, works and services



that meet certain characteristics could be identified and procured centrally. In addition, the entity responsible for the purchase could be defined, as well as its capacity 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. Three sub-indicators are reviewed.

While minimal public procurement information is published, there is no information system in support of public procurement and no plans to implement e-procurement. A red flag has been assigned to this indicator.

Findings

In the case of the BVI there is no specific procurement information system. There is a legal obligation to publish tender notices in the general Gazette, but it is a general publication without much functionality in terms of an information system.

As a consequence, there is no comprehensive data collected or published about the procurement process. The legal framework in the BVI does not establish the obligation or need to gather data. As a consequence, there are no systems to collect or analyse information about procurement activities.

There is no e-procurement strategy. As a consequence, there are no implemented solutions or plans to implement an e-procurement system.

Substantive gaps

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

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

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

Recommendations

The BVI could use information technology more widely to support the public procurement process and to increase transparency of public procurement. A policy or strategy could be developed, based on the most



important needs of procurers, bidders and civil society. The policy could consider open contracting principles, and include rules and procedures for the use of information of the procurement system, defining the obligations to gather and publish documents in every procedure. This policy can be supported by a plan to develop an e-Procurement platform or electronic tools to support the procurement process as well as methods and responsibilities to analyse the information obtained and support system development.

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

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

The BVI does not consider public procurement as a profession and there are no structured efforts to increase the capacity and professionalization of the procurement workforce. There is no performance monitoring. Given that these aspects impact basic procurement objectives, a red flag has been assigned to this indicator and it has been assessed as high risk.

Findings

The BVI does not have a specific training program for procurement officers. The Procurement Unit of the Finance Ministry prepared a Procurement Unit Procedural Manual that includes model documents, but there are no efforts to conduct training in parallel to these procedures.

In terms of an advisory service, it should be noted that the Central Tenders Board is the entity in charge of performing every acquisition process. That means that the Central Tenders Board actively structures this process together with the entity that is acquiring.

In relation to the professionalization of the procuring activity, there are specific officers with responsibilities in procurement, such as accountants. However, their activity is more related to public finance management, not procurement.

Substantive gaps

There is no clear policy for procurement professionalization. As a consequence, training, performance evaluation, follow up and capacity building for the procurement function remain limited and no clear responsibilities are assigned.

The lack of training programs and support for the professionalization of the procurement function is a substantive gap. Professional procurement teams create value for money and support effectiveness in public expenditure. This is why over the past 15 years, countries have recognised the good practice to position public procurers as teams and within groups. This allows these teams to acquire specialised knowledge and skills that are identified through research, education and training at a high level. A professional procurement workforce could also be governed by codes of ethics or codes of conduct, with a commitment to competence, integrity and the promotion of public interest. The system will improve if the officers are better trained and motivated.



Another gap is the absence of procedures to monitor procurement performance and use these insights to develop the 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.

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

Recommendations

The BVI could design a procurement information system and establish indicators to monitor public procurement performance. In doing so, the government could evaluate what kind of data points can be most easily gathered. The policy could define a responsible entity to perform it and define a training program integrated with the public servant career system and its evaluation. Any effort to create a performance monitoring system could be closely linked to the current efforts of reforming the public procurement legal and regulatory framework.

The government could work with other countries in the region to organize a professionalization programme for the procurement function. The BVI could do so for example through its participation in the Inter-American Network on Government Procurement and the Caribbean sub-group thereof. 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.

The Procurement Unit is managing complex and large contracts, while other procurement processes are carried out by procuring entities. Direct purchasing is the main procurement method used. Some challenges exist with regards to artificial splitting of contracts. Open tenders have standardised procedures and comply in general with international best practices, with several exceptions. There is a serious gap in record-keeping and many of the procurement files were lost after Hurricane Irma struck in 2017.

There are no formal dialogue mechanisms between the Government and the private sector. The private sector is in general organised and willing to participate, and takes part in training sessions provided by the government.

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.

Substantive gaps were identified in the planning and contract management stages. A red flag was raised because of the power that the cabinet has to overrule the technical decision of evaluators. Overall, procurement practices might not achieve the objectives sought.

Findings

The Procurement Unit shared two contracts and corresponding tender documents, for the provision of digital photogrammetric services and the office configuration for the Supreme Court. No other files were made available to the assessors as the Procurement Unit records were damaged after Hurricane Irma struck in 2017. Unless stated otherwise, the analysis of this indicator should be understood as corresponding to a small sample of public tenders and should not be read as indicative of procurement in general, because documents related to procedures conducted according to other procurement methods were not available to be analysed.

The Procurement Unit is involved in the most complex and largest contracts. Other procurement processes are carried out directly by procuring entities which need the good or service.

The planning of the procurement process is not documented and there is no evidence that the market is studied thoroughly, involving possible suppliers and checking new market conditions.

The analysed documents for open tenders clearly state the requirements and desired outcomes of contracts and include the necessary technical appendices. They are well integrated and follow a complete standard which is easy to understand and include complete procedures for bid submission including cost, content, clarification, language, sealing and marking of the tenders, among other aspects. These documents include non-price criteria for determining the best bid.

A section about confidentiality of the process states clearly that the process is confidential until the award of the process. Furthermore, a bid may be rejected if the bidder attempts to influence the decision during the evaluation process.

According to the information provided by the Procurement Unit, the process is in general carried out effectively, efficiently and in a transparent way. The vast majority of tender processes the unit handles are successfully awarded and bids are responsive. The average time to procure goods, works and services is adequate compared to international standards. However, 50% of the processes are not awarded within timeframes, which could be interpreted as a weakness in planning.

Public officials and other stakeholders interviewed mentioned the following: (i) below the threshold of USD 100 000, limited consideration is given to value for money; (ii) there is no control over the purchasing activities of procuring entities and fragmentation is common to avoid more complex procedures that apply for procedures above the threshold; (iii) around 70% of the processes are direct, with cabinet granting many waivers to tender, and (iv) several examples were cited that relate to awards made to many suppliers, reducing value for money for the government, such as the building of the high school wall, and the roads of Anegada Island.

For open tenders carried out by the Procurement Unit, bidders and their representatives are allowed to attend bid openings. The award of the contract is announced to the selected bidder. After the selected



bidder provides a performance security, the rest of the bidders are informed of the decision. In a few cases, the cabinet has overruled decisions of the evaluation committee.

Once a process is awarded, the cabinet may ask for further price negotiations to be conducted. The draft contract is sent to the Attorney General Chambers which may in turn include certain modifications. These steps translate into delays towards contract signature. There is consequently no defined term to complete this stage which can take anywhere from a few days to several months. According to analysis by the Procurement Unit, time overruns occur in 42% of the cases and on average take 31.4 days.

The Project Support Service Unit is responsible for contract management. Contracts related to capital projects are also reviewed by a person from the corresponding line ministry. Approval from both the Project Support Service Unit and the line ministry is necessary for the treasury to pay the supplier. According to the Procurement Unit, quality control measures and final acceptance are carried out for all contracts they handle; but it does not have any information about quality control or contract management of other processes carried out by procuring entities.

Contracts analysed include clear provisions on the time limits for payments. The public officials interviewed during the fact-finding mission stated that these are done in general on time once approval is stamped, after the invoices are checked. There are some cases of delays because officers do not always provide approvals within the applicable timelines.

There is generally no direct involvement of external stakeholders in public procurement.

The draft legislation and regulation provide several improvements to the way in which procurement is carried out, but these rules are not yet in place, similar to the draft Handbook of Public Sector Procurement that is supposed to be issued with the approval of the new legal and regulatory framework.

Substantive gaps

There is a substantive gap in the planning of procurement processes, as market research, through the engagement with possible suppliers is not carried out. Furthermore, tender documents do not include evidence of needs analysis.

Direct purchasing is widespread as well as fractioning of processes to stay below the threshold that would oblige entities to go through the Procurement Unit. This creates a risk that the government does not procure the best value for money.

The selection procedure for open tendering has some issues. Scoring rules for each of the criteria are not explicitly explained in the tender documents, creating room for subjectivity. In addition, the cabinet has the power to overrule a decision of the evaluators which may impede achieving the goals of public procurement and cannot be mitigated directly or indirectly, thus raising a red flag for this indicator.

The Procurement Unit had no contract amendments to report for the processes they have carried out, but currently need to amend a contract to modify its scope. As for the rest of the samples studied, there is no information about contract amendments done by procuring entities.

The tender documents studied do not include sustainability criteria and there is no evidence that multi-stage procedures are used for complex procurements according to the current legal and regulatory framework. Regarding the contract stage, no sustainability considerations are included in the contract



clauses, nor incentives for exceeding defined performance levels and disincentives for poor performance. Incorporating these kinds of procurement strategies and considerations into the procurement cycle can contribute to greater efficiency and effectiveness of the procurement process.

42% of the contracts have time overruns which on average exceed one month. This happens because price and contract are negotiated after the tender is awarded. There is no set time limit for these to be finalised.

There are serious information gaps. Records of processes carried out by the Procurement Unit have been destroyed or lost after the 2017 storms. There is no centralised information system for procurement processes carried out directly by procuring entities. Thus, the assessors were unable to review tender documents, contracts, contract management provisions, among other aspects, of these processes. This lack of information poses challenges to the government in evaluating procurement strategies and procurement policies throughout the procurement system.

Except for media attending the bid openings of procurement processes carried out by the electricity company, opportunities for direct involvement of relevant stakeholders in public procurement are not utilised, mainly because many of the documents are not publicly available to these persons.

These gaps are considered to be substantial and were classified as high risk. A red flag was raised related to the power of the cabinet to overrule the technical decisions of evaluators.

Recommendations

The BVI could consider improving the planning stage of its procurement processes. Training could be provided to procuring entities and members of the Procurement Unit to properly research market opportunities and risks, as well as to look for possible suppliers, to make the process as competitive as possible. This planning could be documented in the records of the process.

Capacity building efforts could be aligned with the update of the legal and regulatory framework (see indicator 1). A priority could be to strengthen the rules to include a prohibition of contract fractioning and providing rules for direct purchases. In addition, there could be mechanisms to limit the cabinet's power to overrule technical decisions of the evaluators of the tender.

To reduce the delays in contract implementation, measures such as disclosing contract provisions along with the tender documents could be applied, which would limit the negotiation that is currently taking place after the award of the contract.

As detailed in indicator 7, the BVI could use information technology more thoroughly in support of public procurement processes. This would allow the Procurement Unit to have complete information and calculate statistics for decision-making. As stated in indicator 7, this could include considerations of open contracting to increase transparency of the public procurement process, allowing for participation of stakeholders.

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.

The private sector in the BVI is relatively well organised and has access to the public procurement market. Gaps were identified because there are no dialogue mechanisms between the government and the suppliers. Sector strategies have not been developed.

Findings

There is no dialogue with the private sector nor consultation processes when reforming the public procurement system. Stakeholders stated that laws follow a general procedure of being published in the Official Gazette for comments, but no comments are received or encouraged. Suppliers interviewed said they have been asked for input on a few occasions, but with timeframes that were too short to facilitate responses.

The government promotes procurement fairs that occur once or twice per year and where suppliers may interact with public officials in charge of procurement and receive training, specifically on how to answer to tenders. Other programs to support the private sector in engaging with the government, including ones specifically designed towards SMEs do not exist.

The private sector is willing to participate in the public procurement market and public entities interviewed stated that the local enterprises are usually responsive with regards to purchases of general goods and services. For big contracts, the 2014 Country Procurement Assessment Report found that there are few suppliers able to deliver, which is a usual feature in small island contexts, but there is no evidence of monopolistic behaviour.

There is some degree of supplier organisation and there are some associations in the islands, such as the one for the architects and civil engineers and a local Contractors' Association.

Although a central registry of suppliers should exist (according to the current regulation), this provision is not being enforced. Certain entities such as the Ministry of Public Works have their own registries. Public officials interviewed stated that they intend to work towards having an operational central registry with a grading system in place for the entire BVI.

Tender documents are not available electronically. Confidentiality makes it difficult for suppliers to fully identify and participate in government opportunities. Furthermore, as stated by the Procurement Unit, costs for acquiring the tender documents range between USD 50 and USD 250. The 2014 Country Procurement Assessment Report does not inform of any major systematic constraints.

Finally, no key sectors have been identified. Thus no strategies specific for certain sectors have been developed.

Substantive gaps

The BVI is not encouraging an open dialogue with the private sector about procurement reform. Although consultation for changes in legislation follows the general procedure that foresees the publication of draft acts, no active means of asking for comments or feedback from the private sector, providing adequate timeframes, is carried out.



The Procurement Unit does not have a clear visibility of the number of suppliers available, as there is no supplier registry in place, despite the regulation establishing the need for one.

Tender documents are not available online for free for interested suppliers, which may deter some suppliers from participating in the public market.

Substantive gaps persist related to identifying key sectors. This task has not yet been carried out. Thus no strategies have been designed based on the opportunities and risks of particular sectors.

These gaps were classified as medium risk.

Recommendations

The BVI could consider liaising with the existing business organizations to promote an open dialogue especially regarding procurement reform. Once drafts of acts and regulation are printed in the Gazette, the Procurement Unit could provide sufficient time for suppliers to send comments. Meetings could be a good means of explaining the changes proposed and obtaining direct feedback from interested private sector parties. Regular spaces for discussion could be created to understand the needs and requests of the private sector.

In order to give all interested suppliers a chance of making their voice heard, the Procurement Unit should have a clear understanding of the private sector ecosystem. For this, a register could be set up, preferably online for easier access and reporting. This might also allow the BVI to segment suppliers according to their business sectors. This would be the first step to analyse sectors, assess risks and opportunities and craft the best procurement strategies.

Publishing all tender documents online without charge for all interested parties could boost competition.

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 engagement or oversight with regards to public procurement does not take place, due to a lack of transparency and interested civil society organisations.

The BVI has a fully operational audit framework in place. Two major gaps relate to follow up and implementation for external audit and the lack of internal control manuals and written procedures.

Challenges and appeals are handled through the judiciary. There are no remedies and no administrative complaints procedure.



While the BVI has some elements of an anti-corruption framework, notable gaps persist in relation to crucial aspects, such as conflict of interest management, incorporation of anti-corruption clauses in tender documents, debarment and whistleblowing.

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

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

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

Findings

Groups of citizens under the leadership of members of the opposition party regularly demonstrate and ask for more transparency and accountability in government, including in procurement. Nevertheless, no civil society organisations are present on the island for monitoring and auditing procurement and contracts.

The Public Finance Management Regulations state that notices of invitations to tenders must be published in the Official Gazette, which is online and free, and in a local newspaper. In the context of a small island, external stakeholders interviewed confirmed that these mechanisms work properly to learn about new opportunities with the government. Nevertheless, suppliers must pay between USD 50 and USD 250 to access the tender documents. The Procedural Manual of the Procurement Unit states that for procurement processes following the open tendering procurement method, there are pre-bid meetings to explain the procurement process to interested parties.

Although there is no prohibition, there are no other explicit legal or regulatory provisions that allow for citizen participation in any stage of the procurement process. In practice, there is very limited participation. The Procedural Manual of the Procurement Unit states that the Chief Procurement Officer must open bids for tenders publicly.

Substantive gaps

There is no proper consultation process when formulating public procurement reforms and thus there is no evidence that the government takes into account the input of civil society.

According to the public officials interviewed, there are no programmes in place to build the capacity of stakeholders to understand, monitor and improve public procurement.

Access to information other than notices of invitations to tenders, pre-bid meetings and bid openings, is very limited. Most documents are confidential. Procurement procedures are documented on paper. Contracts under the USD 100 000 threshold are confidential.



The legal and regulatory framework does not have provisions for citizen participation in stages other than the bid opening and there is no evidence of citizen participation in the public procurement process.

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 gaps were classified as medium risk.

Recommendations

To consult civil society on public procurement reforms, the government could explore more engaging mechanisms that go beyond simple publication of drafts in the Gazette. Meetings and events could be explored as ways of interacting with civil society and explaining the proposed changes. For this effort to be successful, capacities must be built among citizens and media to understand procurement and enable civil monitoring and audit of contracts, and government feedback, for example by means of publishing guidelines and offering training.

As mentioned previously, pushing for more open contracting would make it easier for external stakeholders to analyse procurement information and monitor contracts. This can only be achieved if the government is making an effort to disclose more information, especially of those processes which are now confidential because they fall below the established threshold. Furthermore, explicit mentions could be included in legislation about the possibility of citizens to participate throughout the procurement process.

Indicator 12. The country has effective control and audit systems

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

The BVI’s audit system achieves general compliance related to the enforcement and follow-up on findings and recommendations, and the qualification and training of auditors to conduct procurement audits. Gaps were identified related to the lack of written procedures for internal audit. A red flag was raised because of the absence of regular external audit reports.

Findings

The Auditor General is in charge of external audit. The roles and independence of the Auditor General are established in the Constitutional Orders. Additional laws complement the legal framework, specifying rules for external and internal audit.

No specific emphasis is made with regards to procurement, but the Audit Act states the Auditor General must review the use of funds and payments, all of which relate to the procurement function. Reports resulting from external audit should be submitted to the Governor and the Public Accounts Committee for the oversight of the opposition party and House of Assembly. The CARTAC 2015 preliminary evaluation



following the PEFA indicators, found that since 2011, audit reports on financial statements have not been carried out and submitted to the House of Assembly.

Although there is currently no provision for carrying out audits of procurement operations, internal auditors interviewed affirmed that they analyse the compliance of procurement documents and procedures. To a certain extent, auditors focus on the efficiency and effectiveness of procurement procedures when auditing major projects, especially concerning accuracy of needs analysis. Internal control mechanisms and corresponding risks are examined in internal audits and recommendations are issued to auditees.

Internal audit findings are reported to the corresponding line ministry, and, depending on the seriousness of the matter, to the Ministry of Finance and the Deputy Governor. There are provisions and timelines for follow up on recommendations.

There are no procurement-specific instructions in the audit manual.

According to stakeholders, an average of eight internal audits are performed each year. Generally, at least one major program of each ministry is selected. The subject of the audit is selected with the line ministry which may direct the auditors towards specific matters of interest. Auditors may also check for certain matters which they have determined as possible risk factors.

While there is no emphasis on conducting procurement audits, stakeholder interviews confirmed that auditors participate regularly in training. This, at times, included procurement-specific knowledge.

If an audit requires an important procurement-related component, auditors with the best knowledge in procurement are selected. If need be, they may hire consultants for specific tasks, and also ask the Projects Unit of the Ministry of Finance for support in understanding and analysing procurement documents and issues.

Auditors are selected under a competitive procedure run by the Department of Human Resources. Finalists are interviewed directly at the Internal Audit Office. There are currently eight auditors. During 2017 some of the staff was reassigned to other areas and were thus not able to complete the normal audit program. This challenge has been solved for 2018.

Substantive gaps

A substantive gap exists related to external audit, as recently, external audit reports have not been carried out on a regular basis, neither have they been submitted to the House of Assembly. A red flag must be raised as this issue, which lies outside of the procurement sphere, cannot be mitigated directly or indirectly. In addition, there is no evidence of follow-up mechanisms for external audits.

With regards to internal audit, there are no internal control manuals nor written procedures that state requirements for internal control. In addition, the assessors were unable to review the audit manual, as the unit argued that updates were being made to it.

These gaps in the audit framework are of concern as they hinder accountability of the public procurement system, and they were classified as medium risk.

Recommendations



External audit could be carried out annually by the Auditor General. The House of Assembly could play an important role in requesting these audits and following up on the recommendations included in them. For this, follow-up mechanisms could be drafted in a standalone document, to provide the necessary instructions and timeframes.

Regarding internal audit, the BVI could consider drafting internal control manuals for specifying requirements for internal control. This could be seen as a priority and would support the various procuring entities in understanding and mitigating risks related to procurement. The internal audit manual could be updated and disclosed for review by interested stakeholders.

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.

The BVI does not have an administrative appeals procedure in place. There are gaps identified for all the sub-indicators of this indicator. A red flag has been raised because of the lack of procedures that can result in remedies, as this issue cannot be mitigated.

Findings

Currently, there is no legal or regulatory provision that establishes the procedure for administrative challenges and appeals. In practice, the Procurement Unit affirmed that there have been no informal complaints related to decisions of the procuring entities or the Procurement Unit itself.

The BVI has no administrative body tasked with managing complaints and appeals in connection with procurement. The High Court and the Court of Appeal of the Eastern Caribbean Supreme Court are the judicial bodies in charge of reviewing procurement-related complaints.

There is a Complaints Commissioner in the BVI, as per chapter 9 of the BVI's Constitution and the Virgin Islands Complaints Commissioner Act of 2003. This Complaints Commissioner is responsible for investigating any action taken by a department of Government or a public authority in the exercise of its administrative functions. The Commissioner shall not investigate matters subject to remedies by way of proceedings in a court, other than by way of a judicial review and matters subject to appeal.

Decisions of the judiciary must be rendered on the basis of available evidence submitted by the parties. The judiciary is fully independent of procuring entities and is not involved in procurement transactions.

The fees for the judicial process are detailed in the rules and regulation, specific for each case. For example, for the JCPC cases the Appendix to the Judicial Committee (Appellate Jurisdiction) Rules 2009 and the Practice Directions, establish these fees. This aspect was indicated by the suppliers as a constraint to present complaints to the judiciary, along with the timeframes for reaching a decision, and the impossibility of imposing remedies.

Appeals of decisions of the High Court are taken to the Court of Appeal. The highest authority for appeal is the Judicial Committee of the Privy Council (JCPC) in London. No cases have been identified that have



reached this authority. For cases that go to the Court of Appeal or the JCPC, the decisions are published online. There is no evidence of specified timelines stipulated in legislation or regulation. The draft Public Procurement Act, as well as the draft Handbook of Public Sector Procurement, establishes a challenge and appeal procedure.

Substantive gaps

The BVI has no legal or regulatory provision that establishes the procedure for challenges and appeals related to decisions of entities while carrying out procurement processes. There is currently no administrative entity in charge of addressing these complaints. Although a judicial procedure is in place, it is not being used because it does not result in remedies and is both costly and time-consuming for suppliers. This constitutes a red flag, as this issue cannot be mitigated.

The draft act allows for challenges but prohibits complaints against the following: the method of procurement; and the rejection by a procuring entity of all bids received. In addition, it does not establish a description of the members of the Procurement Appeals Board, which provides no guarantee of its independence. These gaps were classified as medium risk.

Recommendations

The BVI could consider passing the proposed provisions established in the draft act and corresponding regulation, which would create a clear procedure for challenges and complaints resulting (if necessary) in the imposition of remedies in procurement processes. There are some aspects that could be improved, related to allowing challenges to complain about the method of procurement, especially as open tendering is not yet the method used in the majority of cases; and about the rejection of all bids received. The act could also establish the procedure for appointing the Procurement Appeals Board, which might guarantee independence of its members from the procurement transactions.

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.

This indicator has gaps in all of its sub-indicators. Red flags were raised because of the lack of effective sanctions, an incomplete anti-corruption framework, the absence of secure mechanisms to report prohibited practices. The fact that there are no civil society organisations that can monitor and audit procurement.

Findings

In regard to legislation about anti-corruption, the government of the United Kingdom extended in 2006 the United Nations Convention against Corruption to the BVI. The UK Bribery Act 2010 which includes comprehensive definitions related to bribery applies to British citizens including in the Territories. Additional specifications exist in the BVI's Criminal Code, and in the General Orders.



The current legislation and regulations related to procurement do not include specific provisions defining prohibited practices, codes of conduct nor obligations to include any related provision in the tender documents. The standard procurement documents for open tenders used by the Procurement Unit include a section on rejection of bids, disqualification of suppliers and administrative sanctions for false or misleading statements or evidence of fraud; collusion; and giving or offering illegal compensation to officers connected to the project.

In respect to external stakeholders, civil society is not organised in associations or NGOs to carry out social audit of procurement and monitoring of contracts. The media is de facto in charge of monitoring contracts and projects, but they are not informed of bid openings and have no access to contract documents. From the private sector perspective, suppliers interviewed affirmed that being a major financial hub, big companies in the BVI are used to having internal compliance measures. This does not apply to small companies.

The proposed draft legislation would introduce several improvements, such as definitions of prohibited practices and debarment policies. The draft Handbook of Public Sector Procurement includes practical examples of prohibited practices, standard clauses to be included in tender documents and a proposal for a Code of Conduct.

There is no procedure established to assess the occurrence of the prohibited practices or poor contract performance, nor possibility for the involved supplier to appeal such exclusion or debarment.

Substantive gaps

This indicator has several substantive gaps. The current legislation and regulation do not comply with the assessment criteria for this indicator. The legal and regulatory framework does not include provisions on conflict of interest related to procurement, nor cooling-off periods for former public officials. The legal and regulatory framework does not have any instructions on how to incorporate provisions on prohibited practices in procurement documents, nor obligations to report general allegations of prohibited practices.

No evidence was provided to the assessors to confirm whether reports of prohibited practices are being made and followed up by law enforcement authorities, nor whether penalties are being applied.

There is no debarment or suspension procedure in place.

The BVI does not have a complete anti-corruption framework to prevent and detect corruption in government, nor any agencies carrying out those tasks. This is further aggravated by the fact that there are no mechanisms for identifying corruption risks, detecting and preventing corruption, nor statistics on corruption-related legal proceedings and convictions are compiled. The procurement officers are not attending regular training on integrity.

There are no civil society organisations nor dialogue mechanisms with the government to promote the role of third-party monitors of procurement. Thus, there is no evidence that civil society contributes to shaping and improving integrity in public procurement.

The assessors found no evidence of secure and confidential channels for reporting cases of prohibited practices, nor provisions to protect whistle-blowers.



Finally, the persons interviewed from the Procurement Unit confirmed that there are no tools such as conflict of interest statements or financial disclosure forms.

Red flags must be raised for this indicator, especially because of the lack of evidence of application of penalties, the absence of a framework for preventing and detecting corruption, the fact that there are no civil society organisations carrying out social audit and contract monitoring, and the lack of secure mechanisms for reporting prohibited practices. These gaps were classified as high risk.

Recommendations

Several of the recommendations that arise after analysing the substantive gaps of this indicator have already been mentioned in other indicators. The BVI could consider amending its current legislation, starting with the proposed draft act and regulation, but improving a number of its provisions to go even further. While these changes are carried out, guidelines may be drafted to address several of the issues found.

The BVI might consider improvements to the anti-corruption framework aiming at increased comprehensiveness. This would require not only new legislation, but also a complete institutional framework establishing institutions responsible for the various tasks to prevent, mitigate risks and penalise corruption and fraud. Once this is set, regular training could be provided for procurement officers. The proposed definitions in the draft regulation of prohibited practices are clear as well as the obligation for including these in the tender documents. This could be complemented by concrete definitions and procedures about conflict of interest, including the possibility of cooling-off periods for former public officials.

One of the most pressing needs is to establish the possibility of debarment. The proposed solution in the draft act is a first step, to be complemented by a clear process to determine how to assess if the supplier was involved in prohibited practices; or did not perform well. Furthermore, a process for appealing a debarment decision is highly suggestable, to mitigate the risk of mistakes arising from the administration.

As mentioned in the recommendations of indicator 11, training and guidelines could be provided for civil society to explain the procurement process and build capacity and interest in monitoring and auditing from their perspective. This could pave the way for a more meaningful and regular dialogue between the government and the civil society for shaping integrity in public procurement in the BVI.

4. Consolidated Recommendations

| Pillar I | | | |
|---|---|---|----------------------------------|
| Discuss and adopt the draft of the procurement act. | Complement the draft of the act with: rules on PPPs, principles for specialised legislation, obligations arising from international agreements, and rules | Create an administrative procedure for challenges and ensure remedies are possible. | Finalise the procurement manual. |



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| to support sustainable development. | | | |
| Pillar II | | | |
| Draft and offer additional standard documents, contracts and clause. | Harmonise financial rules on budgeting and expenditure with procurement rules. | Design and adopt an e-procurement strategy. | Increase the use of competitive methods and limit contract fractioning. |
| Pillar III | | | |
| Improve the planning stage and disclose contract clauses at the start of the tender. | Use electronic files for procurement processes and disclose awards. | Engage with suppliers in a dialogue with government and consider using a supplier register. | |
| Pillar IV | | | |
| Strengthen the anti-corruption framework through a debarment procedure, reporting mechanisms, training, and revised legislation and institutional setting. | Draft internal control procedures and ensure external audits reports are carried out and submitted to the House of Assembly. | Raise awareness with citizens on basic aspects of procurement. | |

A principal recommendation is to formalise the rules of the procurement system in the BVI. This could include to formally adopt and issue the draft Public Procurement Act, as well as the draft Handbook of Public Sector Procurement. Many of the identified gaps would be addressed by those legal texts.

As a next step, the BVI could evaluate to what extent and how missing aspects of the legal and regulatory framework could be added. Aspects include further specifying roles and responsibilities of the institutions involved in public procurement, including the cabinet, policy setter, central purchaser and contracting authorities. A priority could be to strengthen the rules and assign institutional responsibility with regards to integrity and anti-corruption. In addition, there could be mechanisms to limit the cabinet’s power to overrule technical decisions of the evaluators of the tender. In addition, rules for PPP’s, the adoption of procurement principles in specialized legislation, provisions related to sustainability and obligations derived from international agreements could be additions to the legal and regulatory framework. Some aspects of the appeals procedure could be further sharpened.

Additional standard documents, contracts and clauses could be developed to further enhance the existing support for contracting authorities. During the evaluation of needs for additional legal and regulatory documents, an exchange with procuring entities on their challenges could be undertaken, as well as a consultation with suppliers responding to tenders. In implementing changes, the BVI could consider the impact of two aspects: a) the need to align the procurement system with overarching goals and international obligations, and b) the transaction costs for making these changes. In determining an implementation strategy, both sides should be evaluated carefully and balanced prudently.



The BVI could review procurement procedures to achieve greater efficiency and effectiveness of the procurement system. Areas include specialized procedures for annual or multiyear planning in procurement, as well as mechanisms to follow up on spending. In addition, the BVI could develop procedures for processing invoices and authorising payments to establish clear expectations for all parties involved in the public procurement process, as well as a refined feedback mechanism for budget execution. Standard contracting conditions could be published to avoid negotiations. Exploring additional opportunities for aggregating demand could offer potential benefits as well. Finally, fine-tuning the procedures for audit could be beneficial, such as through mandating annual audits, specifying procedures in dedicated documents and affirming the role of the House of Assembly.

The BVI could use information technology more systematically in support of public procurement processes and to increase transparency of public procurement. A policy or strategy could be developed, based on the most important needs of procurers, bidders and civil society. Increasing the use of information technology could be part of a more general effort to establish a procurement information system that can serve not only transactional purposes, but also serves to monitor performance. This would allow decision makers to access complete information and take their decisions based on evidence. These reforms could include considerations of open contracting to increase transparency of the public procurement process, allowing for participation of stakeholders.

The BVI could expand efforts to professionalise the public procurement workforce. The government could work with other countries in the region to organize a professionalization programme for the procurement function. Training can be instrumental to improve the performance of the public procurement system. Training could cover subjects related to weaker areas, such as the planning stage and how to conduct market research

Expanding and structuring engagement with potential bidders and suppliers can be beneficial for the BVI's public procurement system in several ways, such as increased and fairer competition. Among the areas that could be explored are a dialogue with businesses around the ongoing procurement reform to understand the needs and requests of the private sector. A register of suppliers and interested companies could be set up, preferably online. This could be the first step to analyse sectors, assess risks and opportunities and craft the best procurement strategies.

Beyond businesses, additional interactions and engagement with civil society could be useful during the reform and beyond; benefits range from increased accountability, greater suitability of procurements as well as greater public support for government reforms and purchasing decisions. Different aspects are crucial to allow for the involvement of civil society in public procurement, such as increased transparency (i.e., publishing procurement documents, draft laws and regulations, etc.), by organising opportunities for interactions (e.g., to ask questions, provide feedback, etc.) or by providing training on the public procurement system.

As mentioned in connection with the recommendations on legal changes, strengthening the integrity framework is imperative. Actions could go beyond changes in the legal framework, and could aim at establishing a consistent and comprehensive anti-corruption framework, including clear designation of institutional responsibility, reporting lines, debarments procedures, training and support for procurers, suppliers and civil society.



5. Information regarding Validation

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 in the BVI, CDB, and academic procurement experts. From the BVI, the main focal point was Drexel M. Glasgow. 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 BVI – members of the administration, civil society, private sector and media were open and frank interview partners that made this assessment possible in the first place. A full list of interview partners is provided in the annex to this report.



Annex I: Source Documents

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) Country Procurement Assessment Report 2014
- 2) Public Finance Management Act and Amendment 2005
- 3) Public Finance Management Regulations 2005
- 4) Procedural Manual of the Procurement Unit
- 5) General Orders
- 6) Audit Act 2003
- 7) Internal Audit Act 2011
- 8) Constitution of BVI
- 9) Complaints Commissioner Act 2003
- 10) CARTAC PEFA Training and Preliminary Evaluation of Selected Indicators (2015)
- 11) Recovery and Development Strategy from Medium Term Fiscal Plan
- 12) Protocols for Effective Financial Management
- 13) Proposed draft act and regulations
- 14) Draft Handbook of Public Sector Procurement



Annex II: Interviewed Stakeholders

| Type of institution | Name of Institution in the country | Name |
|--|--|--|
| Institution in charge of the normative/regulatory function for public procurement | Ministry of Finance | Drexel M. Glasgow - Director of Projects Diana Purcell-Gumbs - Senior Procurement Officer |
| Authorities responsible for budgeting and financial procedures | Ministry of Finance | Alva Mc Call - Deputy Secretary of Finance - Operations |
| Administrative review (appeals) body for procurement | Central Tenders Board | Alva Mc Call - Deputy Secretary of Finance - Operations |
| Selected number of procuring entities including state owned enterprises | Ministry of Communications and Works Public Works Department Ministry of Education and Culture | |
| Authorities in charge of internal and external controls and audits | Internal Audit Auditor Generals Office | Dorea Maduro – Auditor Sonia Webster, Auditor General |
| Public Service Commission | PSC | |
| Representatives of private sector | Chamber of Commerce Industry and Hotel Association | Louis Potter – Chairman |
| Competition Commission, Authority responsible for Public Private Partnerships | Government of the Virgin Islands | |
| Media | Government Information System/Private Media | Freeman Rogers – BVI Beacon (newspaper) |

