



**MAPS**

Methodology for Assessing  
Procurement Systems

# ASSESSMENT OF ESWATINI PUBLIC PROCUREMENT SYSTEM

2024





# MAPS

Methodology for Assessing  
Procurement Systems

## Assessment of the Kingdom of Eswatini Procurement System 2023-2024

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Procurement Systems

## Kingdom of Eswatini

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# Assessment of the Public Procurement System

## VOLUME I - REPORT



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# Acknowledgements

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# Acronyms

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ACC	Anti-Corruption Commission
AfCFTA	African Continental Free Trade
AfDB	African Development Bank Group
ASC	<b>Assessment Steering Committee</b>
CANGO	Co-ordinating Assembly of Non-Governmental Organisations
CIC	Construction Industry Council
CIC Act	Construction Industry Council Act No.14 of 2013
CIFA	Country Integrated Fiduciary Assessment
CIPS	Chartered Institute of Purchasing and Supply
CMA	Common Monetary Area
COMESA	Common Market for Eastern and Southern Africa
CPI	Transparency International Corruption Perceptions Index
CSO	Civil Society Organisation
e-GP	Electronic Government Procurement
EEC	Eswatini Electricity Company
EGTB	Eswatini Government Tender Board
ESERA	Eswatini Energy Regulatory Authority
ESPPRA	Eswatini Public Procurement Regulatory Agency
ESWACAA	Eswatini Civil Aviation Authority
ESWADE	Eswatini Water and Agricultural Development Enterprise
EU	European Union
FESBC	Federation of Eswatini Business Community
GCC	General Conditions of Contract
GDP	Gross Domestic Product
GPA	World Trade Organization Agreement on Government Procurement
IAO	Internal Audit Office
ICT	Information and Communication Technology
IFMIS	Integrated Financial Management Information System
IIA	Institute of Internal Auditors
ILO	International Labor Organization
IMF	International Monetary Fund
IRC	Independent Review Commission
MAPS	Methodology for Assessing Procurement Systems
MERCOSUR	Mercado Común del Sur (Southern Common Market)
MIC	Middle income country
MoF	Ministry of Finance
MoPWT	Ministry of Public Works & Transport
MSME	Micro Small and Medium Enterprises
NDMA	National Disaster Management Agency
NDP	National Development Plan 2023/24-2027/28
NGO	Non-Governmental Organisation
OAG	Office of the Auditor General
PAC	Parliamentary Public Accounts Committee
PE Act	Public Enterprises (Control and Monitoring) Act No.8 of 1989





PEFA	Public Expenditure and Financial Accountability
PEU	Public Enterprises Unit
PFMA	Public Finance Management Act 2017
POCA	Prevention of Corruption Act, 2006
PPP	Public Private Partnership
PPR	Public Procurement Regulations 2020
PPR 2008	Public Procurement Regulations 2008
PSA	Public Service Act No.5 of 2018
REPS	Royal Eswatini Police Service
RSTP	Royal Science and Technology Park
SACU	Southern African Customs Union
SADC	Southern Africa Development Community
SCC	Special Contract Conditions
SCM	Supply Chain Management
SEDCO	Small Enterprises Development Company
SPP	Sustainable Public Procurement
STD	Standard Tender Documents
SZL	Swaziland Lilangeni
TS	Technical Secretariat
TSA	Treasury Single Account
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollars
WB	World Bank
WTO	World Trade Organization

Exchange rate applied: United Nations Operational Rate of Exchange at 01 May 2024: one United States Dollar = SZL 18.703<sup>1</sup>

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<sup>1</sup> <https://treasury.un.org/operationalrates/OperationalRates.php>



## Executive summary

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This MAPS Assessment has taken place at a particularly good point in the development of the procurement system in Eswatini. Prior to this MAPS Assessment there had been no comprehensive country-level procurement assessment carried out in Eswatini. In 2011, the Procurement Act was passed, coming fully into effect in May 2013 and establishing the Eswatini Public Procurement Regulatory Agency (ESPPRA). Implementing regulations, the Public Procurement Regulations 2020 (PPR) came fully into force on 24 May 2021. The MAPS Assessment covers procurement using public funds of goods, works and services, including consultancy services, by all three types of procuring entities - central government, local government and “Category A parastatals” (enterprises which are majority Government owned or controlled). In May 2023, when the MAPS Assessment was launched and data collection commenced, the PPR had been in operation for approximately two years, allowing for analysis of how the updated legislative framework (PPA and PPR) is working and applied in practice. The findings of the quantitative indicators may serve as the baseline for the assessment of impact of procurement reforms in future. The outcomes of this MAPS assessment, applying the core MAPS Methodology, will also help inform the effective roll-out and implementation of the e-GP system over the next four years.

Information for the MAPS Assessment was collected using a combination of in-person in-country meetings and workshops, on-line meetings, desk-based review and an anonymous private sector survey. In addition, a total of 83 procurement files were reviewed on-site and resulting data was analysed. The MAPS Assessment team encountered a number of challenges when conducting the assessment. Timelines were delayed due to a combination of the national elections and challenges in obtaining access to sampling related data and procurement files. Lack of reliable, consolidated national data on procurement also proved to be a significant limitation. The private survey elicited only a few responses and direct engagement was an important complementary source of information. Direct engagement with stakeholders was generally helpful and informative.

The legal and regulatory framework for public procurement in Eswatini is organized hierarchically, published and publicly available on-line. The Procurement Act and PPR present a comprehensive framework for conduct of public procurement which is generally good, with a few areas identified for improvement. The legal framework also sets out the functions and activities of four key procurement institutions, being the Ministry of Finance and its Technical Secretariat, the Eswatini Public Procurement Regulatory Agency (ESPPRA), the Independent Review Committee (IRC) and the Eswatini Government Tender Board (EGTB). The Government of Eswatini is committed to improvements in the procurement ecosystem, with the introduction of an end-to-end e-GP system.

The issues identified as Gaps by the MAPS Assessment team relate primarily to procurement in practice and are often tied in with wider systemic problems linked, for example, to weak budgetary and financial controls and lack of a robust anti-corruption framework. Resolving many of these Gaps will require action at governmental level and high levels of broad inter-institutional cooperation and investment. Some suggested priority areas for improvement which can be initiated within the public procurement sphere are listed below.



*Update the legal framework in readiness for roll-out of e-GP system:* The legal framework will benefit from review and updating, to ensure better alignment with e-procurement and the processes and functionalities which will become available through the e-GP system. This will require consideration of changes having an impact on the whole procurement cycle, from procurement planning through to contract and performance management, delivery and payment. Provisions will need to be included to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures to grant unrestricted and full access to e-procurement.

*Improve data submission and collection:* It is essential to have comprehensive, meaningful and accurate national level procurement data to facilitate analysis and understanding of the value and level of procurement activity, how the procurement system operates in practice and to identify areas for improvement. With successful roll out of the e-GP system in mind, it is important to have coherent and clear messaging and enforcement measures to ensure that, as a first step, all procuring entities submit information, documents and reports to the ESPPRA in accordance with statutory obligations and timescales. These measures need to be prioritised to create behavioural changes which will also be key to the effectiveness of the e-GP System.

*Publish standard tender documents and contract conditions and mandate their use:* Standard tender documents and contract conditions provide good foundations to assist procuring entities, ensure consistency and promote efficiency, participation and common understanding of the system for all stakeholders. It is important to prioritise the finalisation and adoption of the standard tender documents and standard contract conditions and mandate their use by all procuring entities in central government, local government and Category A parastatals.

*Improve procurement record keeping:* Changes in approach are also required at procuring entity level to ensure that procurement records and documents are consistently collated and retained in a single file in one location at procuring entity level. The introduction of an end-to-end e-GP system should assist in improving record keeping. Roll out of the e-GP system will be in stages and so it will not immediately cover all phases of the procurement cycle. In the meantime, capacity building and other measures should be implemented, including drawing on examples of good practice in Eswatini to underline the importance of good record keeping and provide tools for improvement. This should also assist in the effective adoption of e-GP in practice.

*Conduct an Institutional Review to provide proposals for reform:* The lack of coherence in the system and silos in practice resulting from two parallel systems<sup>2</sup> in operation for day-to-day conduct of procurement needs to be resolved in order to increase transparency and effectiveness of the system. It is recommended to undertake an institutional review, to provide proposals for and implementation of revised or new institutional and operational structures, functions and operational responsibilities. These must be well aligned with operation of the e-GP system, with the aim of improving transparency and effective

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<sup>2</sup> The parallel systems mean that procurement by central government entities is generally advertised on the Government web site, uses Ministry of Finance issued documents and is quality controlled by the Ministry of Finance Technical Secretariat. Procurement by local government and Category A parastatals is generally advertised and conducted using the ESPPRA website where advertisements and contract documents are published and subject to quality control by the ESPPRA.



operation of the whole public procurement system and the involved institutions. As well as looking at the functions, responsibilities and activities of the ESPPRA and Ministry of Finance Technical Secretariat it is also advisable to review the current activities of the Eswatini Government Tender Board and Government Central Stores as well as future requirements for the following: consolidated procurement of common use or specialised items; solicitation and management of framework agreements; use of e-catalogues, e-market places and e-auctions; delivery of complex procurement, which could include PPPs, and; procurements requiring specialised legal or technical expertise.

*Prepare a policy/strategy and implementation plan for Sustainable Public Procurement (SPP):* To support sustainable development in Eswatini, prepare a policy/strategy for SPP addressing economic, environmental (including climate considerations) and social (including gender equality) aspects. This will need to support broader national policy objectives and reflect priorities set out in the National Development Plan. It will also be important to prepare a clear implementation plan in support of the policy/strategy, to identify priorities and set out short, medium and long term activities and responsibilities. This should include introduction of systems and tools to operationalize, facilitate and monitor the application of SPP and identification of any amendments necessary to the legal framework and standard procurement documents, to allow for sustainability to be fully incorporated at all stages of the procurement cycle.

*Focus on professionalisation of procurement:* There is a lack of suitably qualified procurement professionals, particularly within central government. This presents risks in terms of the reliability and efficiency of the procurement system and may also hinder the effective roll out of the e-GP system if not addressed promptly. It is recommended that a concerted effort is made to both prepare and implement a professionalisation strategy to enhance procurement as a profession and to address issues including necessary procurement structures, career progression, professional support, training and other development needs. The strategy should acknowledge and address the needs of all types of procuring entities and aim to present a joined-up approach for the whole procurement system.

The MAPS Assessment Team has identified in this Report proposed priority actions for the Government of Eswatini to consider, at Section 5 Strategic Planning.

The full analysis, explanations of Gaps identified, Recommendations and Suggestions for Improvement are set out in this Report and in the Matrix at Volume 2.

## Overview of compliance

The following table provides an overview of the findings of the assessment on the level of sub-indicators. Each sub-indicator is identified depending on the findings (full compliance / gaps identified / substantive gaps identified). This table also shows the red flags identified.

Please note that the sub-indicators listed in the overview of compliance table below are further divided into individual assessment criteria which are each assessed separately according to the MAPS Methodology. The number of qualitative criteria per sub-indicator varies between one and eleven, in some cases supported by quantitative indicators. The overview of compliance table presents an aggregated conclusion based on all of the assessed criteria for each sub-indicator. This means that where a single criterion under a sub-indicator is assessed to have a gap this will trigger the “Gaps identified” or “Substantive gaps identified” finding (depending on the nature of the gap) in this compliance table for



that sub-indicator. This can be the case even where all other criteria under that particular sub-indicator are met. It is therefore important to refer to the full assessment findings and supporting analysis.

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



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

PILLAR III		Full compliance	Gaps identified	Substantive gaps identified	Red flags
9. Public procurement	9(a) – Planning			X	
	9(b) – Selection and contracting			X	



<b>PILLAR III</b>		<b>Full compliance</b>	<b>Gaps identified</b>	<b>Substantive gaps identified</b>	<b>Red flags</b>
<b>practices achieve stated objectives.</b>					9(b)(g)
	9(c) – Contract management in practice			X	9(c)(c) 9(c)(e) 9(c)(g)
<b>10. The public procurement market is fully functional.</b>	10(a) – Dialogue and partnerships between public and private sector			X	
	10(b) – Private sector's organisation and access to the public procurement market			X	10(b)(b)
	10(c) – Key sectors and sector strategies			X	10(c)(a) 10(c)(b)

<b>PILLAR IV</b>		<b>Full compliance</b>	<b>Gaps identified</b>	<b>Substantive gaps identified</b>	<b>Red flags</b>
<b>11. Transparency and civil society engagement strengthen integrity in public procurement.</b>	11(a) – An enabling environment for public consultation and monitoring			X	11(a)(b) 11(a)(c)
	11(b) – Adequate and timely access to information by the public			X	11(b)(a)
	11(c) – Direct engagement of civil society			X	11(c)(b)
<b>12. The country has effective control and audit systems.</b>	12(a) – Legal framework, organisation and procedures of the control system			X	12(a)(a) 12(a)(b) 12(a)(c) 12(a)(d) 12(a)(e) 12(a)(f)
	12(b) – Co-ordination of controls and audits of public procurement			X	12(b)(a) 12(b)(b) 12(b)(d)
	12(c) – Enforcement and follow-up on findings and recommendations			X	12(c)(a) 12(c)(b)
	12(d) – Qualification and training to conduct procurement audits	X			
<b>13. Procurement appeals mechanisms are effective and efficient.</b>	13(a) – Process for challenges and appeals	X			
	13(b) – Independence and capacity of the appeals body			X	13(b)(g)



PILLAR IV		Full compliance	Gaps identified	Substantive gaps identified	Red flags
	13(c) – Decisions of the appeals body		X		
14. The country has ethics and anti-corruption measures in place.	14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties			X	14(a)(a) 14(a)(c)
	14(b) – Provisions on prohibited practices in procurement documents			X	
	14(c) – Effective sanctions and enforcement systems			X	14(c)(b) 14(c)(c) 14(c)(d)
	14(d) – Anti-corruption framework and integrity training			X	14(d)(a)1 4(d)(b) 14(d)(c) 14(d)(d) 14(d)(e)
	14(e) – Stakeholder support to strengthen integrity in procurement			X	14(e)(a)1 4(e)(b) 14(e)(c) 14(e)(d)
	14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour			X	14(f)(a) 14(f)(b) 14(f)(c)
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules			X	14(g)(a) 14(g)(b) 14(g)(c) 14(g)(d) 14(g)(e)





# 1. Introduction

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## Context

In February 2022, the Government of the Kingdom of Eswatini (Government), represented by the Ministry of Finance requested the support of the African Development Bank (AfDB) to support the country by leading the MAPS Assessment of the public procurement system of Eswatini in collaboration with Government. Prior to this MAPS Assessment there had been no comprehensive country-level procurement assessment carried out in Eswatini. A PEFA<sup>3</sup> assessment was carried out in 2010 (published in 2011). A medium to long term recommendation of that PEFA Assessment was continued enhancement of on-going procurement reform, which is ongoing in Eswatini.

In 2011, the Procurement Act was passed, coming fully into effect in May 2013 and establishing the Eswatini Public Procurement Regulatory Agency (ESPPRA).<sup>4</sup> Implementing regulations, the Public Procurement Regulations 2020 (PPR) came fully into force on 24 May 2021. This MAPS Assessment has taken place at a particularly good point in the development of the procurement system. In May 2023, when the MAPS Assessment was launched and data collection commenced, the PPR had been in operation for approximately two years, allowing for analysis of how the updated legislative framework (the Procurement Act and PPR) is working and applied in practice. The findings of the quantitative indicators will also serve as the baseline for the assessment of impact of procurement reforms in future. The outcomes of this MAPS assessment, applying the core MAPS Methodology, will help inform the effective roll-out and implementation of the e-GP strategy in the future.

## Involved institutions, co-ordination and governance

The lead institution for this MAPS Assessment is the African Development Bank (AfDB). The Ministry of Finance has provided direct support and assistance to the MAPS Assessment team by facilitating the conduct of the MAPS Assessment. Overall ownership and strategic leadership, as well as responsibility for day-to-day coordination of the assessment in Eswatini has been provided by the Eswatini Public Procurement Regulatory Agency (ESPPRA), an independent regulatory body established under the Procurement Act 2011 and reporting to the Ministry of Finance. The national coordinator for the MAPS Assessment is a staff member of the ESPPRA.

The Assessment Steering Committee (ASC) was established under the Chairmanship of the Chief Executive Officer of ESPPRA. Membership of the ASC includes officials from Ministry of Finance and Government agencies involved in public procurement, private sector entities, civil society organisations and

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<sup>3</sup> Public Expenditure and Financial Accountability program and framework for assessing and reporting on the strengths and weakness of public financial management.

<https://www.pefa.org/sites/pefa/files/assessments/reports/SW-Sep11-CIFA-Public.pdf>

<sup>4</sup> For simplicity, the acronym “ESPPRA” is used in this report to refer to Eswatini Public Procurement Regulatory Agency (ESPPRA). The ESPPRA was previously known as the Swaziland Public Procurement Regulatory Agency (SPPRA) and is also often referred to in the procurement legal framework as “the Agency”.



development partners. The ASC met with the MAPS Assessment Team regularly during the MAPS Assessment to report on progress and seek input. The MAPS Assessment Team also provided interim written updates to the ASC to report on progress between meetings (see Annex 3 for list of ASC members, meetings and updates).

## The MAPS Assessment Team

The core members of the MAPS Assessment Team are:

- Lead Consultant and Procurement Lawyer (international): Honorary Professor Susan Penelope Smith (Susie Smith) as Lead Consultant and Procurement Lawyer.
- Local Consultant: Lomakhosi W. Magagula, Managing Director Zeal Procurement and Supply Chain Limited, whose primary role has been conducting the sampling of procurement files, whilst providing valuable local input and knowledge more generally.
- Data collection and analysis and Procurement Consultant: Tiago Neto Leite, who led on selection of procurement files for sampling and analysis of sampled data and the private sector survey.
- AfDB Task Managers: Chongo Chitupila and Amilcar Bilale, who have led the MAPS Assessment and liaised with the Government, stakeholders and Development Partners.

The MAPS Assessment Team has been well supported by Thandeka Dube, ESPPRA, who is the MAPS Assessment national coordinator. AfDB has also provided the expertise of a country economist and public financial management specialists.

## Objectives

The broad objective of the MAPS assessment is to support the Government in improving the performance of the public procurement system and yield optimal results in the use of public funds and delivery of services to citizens while maintaining high standards of integrity. Specifically, the MAPS Assessment aims to:

- Develop a shared understanding of the current state of Eswatini's Public Procurement System amongst all stakeholders to: strategise future reform efforts and achieve a modern and harmonised procurement system based on the core principles of transparency, accountability and value for money;
- Identify the strengths and weaknesses of the public procurement system and suggest improvement measures, with particular reference to ongoing reform of the legal framework and introduction and roll-out of e-GP.

Based on the results of this core assessment, further MAPS supplementary modules may be undertaken in the future.

## Scope – procuring entities and subject matter of procurement

The MAPS Assessment covers all types of procuring entities, as defined in the Procurement Act, being central government, local government and Category A parastatal organisations. Central Government covers Ministries and Departments and Local Government covers municipalities/urban councils. Category



A Parastatals are enterprises which are majority Government owned or controlled, including in the following sectors: agriculture, transport, finance, utilities (electricity, post and telecommunications, water services), business promotion, education, tourism and environment, housing, labour, health, sports, disaster management and regulatory. The ESPPRA's Annual Report 2020/2021 lists 91 procuring entities in total: 25 Central Government procuring entities, 13 Local Government procuring entities and 53 Category A Parastatals. The Procurement Act applies to procurement by these procuring entities of works, goods, services and consultancy services, defining the subject matter falling within the scope of the MAPS Assessment.

## Process

The assessment was carried out following the Methodology for Assessing Procurement Systems (MAPS, Version 2018). The MAPS Assessment was conducted in three phases.

- **Phase 1 Planning and preparation (February 2022 to April 2023):** establishment of the multi-disciplinary team; initial consultation with ESPPRA to discuss and build consensus; conduct of stakeholder mapping to ensure as broad representative coverage as possible from institutions, procuring entities, private sector and civil society (see list of key stakeholders identified in the Concept Note in Annex 1); agreeing on the composition of the ASC; preparation of the Concept Notes including to tailor the assessment to the Government's procurement strategy and development activities.
- **Phase 2 Conducting the Assessment including (May 2023 to February 2024):** the launch mission in Eswatini, to facilitate direct engagement with key stakeholders (institutions, private sector, civil society and education) and to conduct the launch workshop with the wider stakeholder community including procuring entities; desk review of legislative framework and other data and documents; collection of qualitative and quantitative data including in one-to-one stakeholder meetings, conduct of private sector survey and sampling of procurement files; additional mission by AfDB team to assist in sampling process; data analysis; formulation of findings and recommendations, and; validation mission in Eswatini including validation workshop. During this phase, the MAPS Assessment Team had regular team meetings with the ESPPRA and with the ASC and reported on a regular basis to the Ministry of Finance.
- **Phase 3 Reporting (March to June 2024):** preparation of the final draft Report to incorporate inputs from: various stakeholders provided during the validation process, including the Validation Workshop and Assessment Steering Committee; Ministry of Finance; ESPPRA, and; the internal and external quality assurance processes.

## Timeline – original and revised

The Eswatini MAPS Assessment was formally launched at the Workshop in Manzini, Eswatini, on 17 May 2023. The timeline set out in the Concept Note envisaged conclusion of the primary data collection phase by the end of September 2023, including sampling of procurement files. This allowed for draft report writing, leading to validation in October/November 2023 and finalisation of the report by the end of December 2023. The intention was to then submit the Assessment Report for external quality assurance process to be conducted in the first quarter of 2024.



There were delays in the data collection process (see explanatory note below “Limitations encountered in the Assessment”). Consequently, the MAPS Assessment Team decided to extend the formal data collection period by two months, to the end of November 2023. This was to provide further opportunities for provision and collection of critical data by relevant stakeholders. The MAPS Assessment Team informed the Ministry of Finance, ESPPRA and ASC of the extension and reasons for the decision. In order to minimise the impact of this delay, the MAPS Assessment Team tracked in parallel some elements of the Analysis where sufficient data was already available. Table 1 below shows the original and revised timelines. The overall timeline of the Assessment was delayed by three months, with the validation mission conducted in the week of 5-9 February 2024.

*Table 1: MAPS Assessment timelines, original and revised*

Overview of Tasks (activities) / Months	Original timeline											Revised timeline					
	2023											2024					
	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
1. Concept Note, Logistics, kick-off meetings																	
2. Analysis of Country Context																	
3. Assessment: Data Collection																	
4. Assessment: Analysis (3-steps)																	
5. Recommendations																	
6. Validation																	
7. Report Writing																	
8. Quality Assurance																	
9. Final Report/ Dissemination																	

## Source and methodology for data collection

**Qualitative and quantitative data from institutional stakeholders:** Data from institutional stakeholders was obtained from (1) published on-line resources, where available, and (2) direct engagement with key stakeholders, using a mix of on-line and in-person interviews, with follow up requests for additional data and information as necessary. This engagement was facilitated in most cases by ESPPRA and also by the Ministry of Finance where the relevant stakeholder falls within the sphere of influence of the Ministry of



Finance. The table below lists institutional stakeholders who the MAPS Assessment Team met and dates of meetings. This is in addition to regular, ongoing engagement with Ministry of Finance and ESPPRA.

*Table 2: Institutional stakeholders who MAPS Assessment Team met in one-to-one meetings for information and data collection purposes*

Institutional stakeholder	Meeting date Information and data collection
Accountant General	06 February 2024
Anti-Corruption Commission	18 August 2023
Attorney General	18 October 2023
Auditor General	17 October 2023
Central Government Stores	06 February 2024
Construction Industry Council (CIC)	21 August 2023
Civil Service Commission	08 December 2023
Competition Commission	3 November 2023
ESPPRA Audit, monitoring, compliance department	19 Sept 2023
ESPPRA Capacity Building, training, advisory department	13 Nov 2023
ESPPRA General, including legal	01 December 2023 05 February 2024
Eswatini Government Tender Board (EGTB)	25 September 2023
Independent Review Commission (IRC)	20 July 2023
Independent Review Commission (IRC) Secretariat (ESPPRA)	28 July 2023
Internal Audit, Ministry of Finance	17 August 2023
Public Enterprise Unit, Ministry of Finance	25 October 2023
Ministry of Finance, Director of Supply Chain Management	05 February 2024
Royal Eswatini Police Service (REPS)	18 August 2023
Technical Secretariat, Ministry of Finance & EGTB Secretariat	31 August 2023

**Other stakeholders:** The MAPS Assessment Team also met with, and obtained information from, education & training providers (including University of Eswatini, Institute of Development Management, Eswatini Higher Education Council, a professional body (CIPS), Eswatini Economic Policy Analysis and Research Centre (ESEPARC), the Civil Society Organisation (CSO) umbrella organisation CANGO and representatives of the private sector (Business Eswatini and FESBC). The MAPS Assessment Team took the opportunity to have further direct focused engagement with local authorities, CANGO and some of their member organisations and MSMEs through FESBC during the Validation week in Eswatini (5-9 February 2024) and had follow up discussions with Business Eswatini after the Validation week.

**Sample procurement files:** The Concept Note sets out the proposed methodological approach to sampling of procurement files. There are a total of 91 procuring entities in Eswatini. There are three types of procuring entities: central government (25), local government (13) and Category A Parastatals (53). As explained in the Concept Note, the decision was made to focus on the top spending and most active procuring entities, with distribution of samples from each type of procuring entity. The sample was to be representative of overall procurement activity and thus cover procurement of supplies, works, consulting and non-consulting services and a range of procurement procedures. An initial list was prepared, with the



assistance of the ESPPRA, of seventeen (17) procuring entities meeting the spending and activity criteria. The aim was to obtain and analyse ten (10) sample procurement files from each of nine (9) procuring entities (90 sample files in total). Following analysis of information on procurement activities, an initial list of nine (9) procuring entities was selected from the total of seventeen (17), applying the methodology to ensure representative samples. The number of samples requested from each procuring entity was more than ten (10), in recognition of the likelihood that some sample files may not contain sufficient information or may not be available.

Despite considerable practical challenges and delays (see previous paragraph and explanatory note below “Limitations encountered in the Assessment”), the MAPS Assessment Team was able to collect and analyse procurement files as follows:

*Table 3: Sampled procurement files*

	<b>Procuring Entity</b>	<b>Procuring Entity Type</b>	<b>Sample Number</b>	<b>Data collected*</b>	<b>%</b>
1	Eswatini Electricity Company (EEC)	Category A Parastatal	15	8	53
2	Eswatini Civil Aviation Authority (ESWACAA)	Category A Parastatal	15	9	60
3	Eswatini Energy Regulatory Authority (ESERA)	Category A Parastatal	15	15	100
4	Eswatini Water and Agricultural Development Enterprise (ESWADE)	Category A Parastatal	16	11	69
5	Mbabane City Council	Local Government	14	13	93
6	Ministry of Natural Resources	Central Government	15	13	87
7	Ministry of Public Works & Transport (MoPWT)	Central Government	15	9	60
8	National Disaster Management Agency (NDMA)	Category A Parastatal	15	0	0
9	Royal Eswatini Police Service (REPS)	Central Government	8	5	63
		<b>Total</b>	<b>128</b>	<b>83</b>	<b>65</b>

**Private Sector Survey and direct engagement:** The MAPS Assessment Team prepared an on-line Microsoft Forms-based Private Sector Survey for collection, on an anonymous basis, of quantitative and qualitative data including data required for quantitative survey-based indicators. During the launch mission week in May 2023, the MAPS Assessment Team met with two (2) key representative organisations,



Business Eswatini (representing larger businesses) and FESBC (Federation of Eswatini Business Community, representing informal, micro, small & medium, women-owned business sectors) who agreed to circulate an on-line Private Sector Survey to their members. The MAPS Assessment Team provided a link and supporting explanatory information to Business Eswatini and FESBC on 12 September 2023, for onward circulation.

The initial closing date was 19 October 2023. The number of responses at that date was disappointing and so the closing date for submissions was extended. In the meantime, the MAPS Assessment Team requested further assistance from Business Eswatini to remind their membership about the survey. The local consultant also reached out to local contacts in the business community. In addition, the MAPS Assessment Team with the assistance of ESPPRA, looked at ways to expand coverage in terms of recipients. Consequently, the MAPS Assessment Team and ESPPRA asked for assistance from: the Construction Industry Council, who hold a database of construction firms, requesting them to circulate the survey link, and SEDCO (Small Enterprises Development Company), who have a list of MSME contacts. The MAPS Assessment Team also sent the request direct to listed contacts held on the ESPPRA's own database of suppliers. At the formal close of the extended data collection period, 30 November 2023, the total number of responses received was only 11. (For further discussion, see explanatory note below "Limitations encountered in the Assessment"). Considering the limited number of responses, and the priority need to obtain feedback from representatives of the private sector, the Assessment Team, in collaboration with ESPPRA, decided to create a second, shorter and simplified version of the online questionnaire, which was then distributed. In discussions with ESPPRA, the MAPS Assessment Team decided that direct approaches to contacts in the business sector may result in more responses and so the ESPPRA made calls to suppliers directly inviting them to complete a shortened version of the private sector survey.

During the Validation week and in follow up meetings, the Assessment Team was able to engage directly with organisations representing businesses in Eswatini and obtained feedback on specific issues covered in the private sector survey. Information received during direct engagement has been incorporated in the assessment and used to support survey findings, in the light of the overall low level of survey responses. The business organisations also agreed to issue another invitation to their members to complete the online survey. At the agreed final closing date, 29 February 2024, there were 24 responses in total, 11 from the first version of the survey and 13 from the second version. An aggregated analysis of the results was carried out.

## Limitations encountered in the Assessment

The MAPS Assessment team encountered several limitations when conducting the assessment which had a direct impact on both the timeline and the availability, quality and quantity of data for analysis. The challenges raised in engaging with the private sector have been outlined above. Timelines were delayed due to a combination of the national elections and challenges in obtaining access to sampling related data and procurement files. Lack of reliable, consolidated national data on procurement has also proved to be a significant limitation. These issues are explained further below.

**National election:** In early May 2023, after some months of speculation, the Elections and Boundaries Committee announced dates for the Eswatini General Election, with the primary round of elections scheduled for 26 August 2023 and the second round on 29 September 2023. Parliament was dissolved on





11 July 2023. In the run up to elections there was reduced availability of civil servants from some of the procuring entities with whom the MAPS Assessment planned to engage, many of whom were undertaking election related duties. There was also an understandable focus at government level on the forthcoming elections and some uncertainty within Ministries as to future post-holders. Following peaceful elections, His Majesty King Mswati III announced the appointment of Ministers, with appointment of the new Prime Minister confirmed on 3 November 2023.

**Problems with access to sampling related data and procurement files:** The MAPS Assessment Team encountered significant problems, in the case of some procuring entities, in obtaining data required for selection of procurement files for sampling and then accessing those procurement files for sampling and analysis. In general, data was most easily available from Category A Parastatals who are more likely to have dedicated procurement personnel. The MAPS Assessment Team found engagement with a number of Ministries particularly challenging with some providing patchy data or failing to engage, despite repeated efforts on the part of the MAPS Assessment Team. The MAPS Assessment Team thus requested assistance from the Ministry of Finance to facilitate the data collection process with less cooperative Ministries.

**Quality/comprehensiveness of sample files:** In the case of procurement files sampled, the MAPS Assessment Team frequently encountered poor quality and fragmented record keeping, meaning that obtaining relevant data for analysis was challenging as single consolidated procurement files are often not easily available. This was particularly observed with regard to the post-award phase, with a particular focus on the monitoring of payments - see 9(c) for an in-depth analysis.

**Availability and quality of general procurement related data for analysis:** There is no central source of reliable consolidated national data on public procurement activity in Eswatini. Available data does not present a full picture and sources cannot be safely combined to produce a national level analysis as it cannot be established whether the parameters applied to collect data are consistent. The MAPS Assessment team was unable to obtain comprehensive data from either the ESPPRA or the Ministry of Finance on procurement activities required for assessment purposes.

One of the statutory functions of the ESPPRA is data and information management. Under the legal and regulatory framework, all procuring entities are required to provide procurement data to the ESPPRA which should, in theory create a source of national level data. In practice, however, the ESPPRA receives some data from most local government and Category A parastatals but most Ministries provide very limited or no data. Data provided by the ESPPRA is therefore incomplete and cannot be relied upon to provide an accurate picture of public procurement activity by all procuring entities in Eswatini.<sup>5</sup> The Ministry of Finance was also unable to provide consolidated data in respect of all activities of Ministries. The Eswatini Government Tender Board provided the MAPS Assessment with a copy of their Annual Report for the financial year 2022-2023. The focus of much of the data in the Eswatini Government Tender Board's Annual Report relates to the above threshold activities of central government which are subject to the Eswatini Government Tender Board approval process.

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<sup>5</sup> The most recent publicly available ESPPRA Annual Report is for financial year 2020/2021. In addition, the ESPPRA was able to provide the MAPS Assessment team with some consolidated data for 2021/2022 and 2022/2023.





## 2. Analysis of Country Context

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

The Kingdom of Eswatini<sup>6</sup> is a landlocked country in Southern Africa, lying between South Africa and Mozambique, with a total land mass of 17,364 square kilometres. The administrative capital is Mbabane and the royal and legislative capital is Lobamba.

Despite its small size, the land and climate are diverse, with four agroecological zones, ranging from humid and near temperate climates to arid climates. Although not classified as resource rich, the country is endowed with an array of natural resources that include arable land, rangelands, mineral deposits including gold, coal and diamonds as well as other natural resources including wildlife, forests, livestock and scenic terrain.

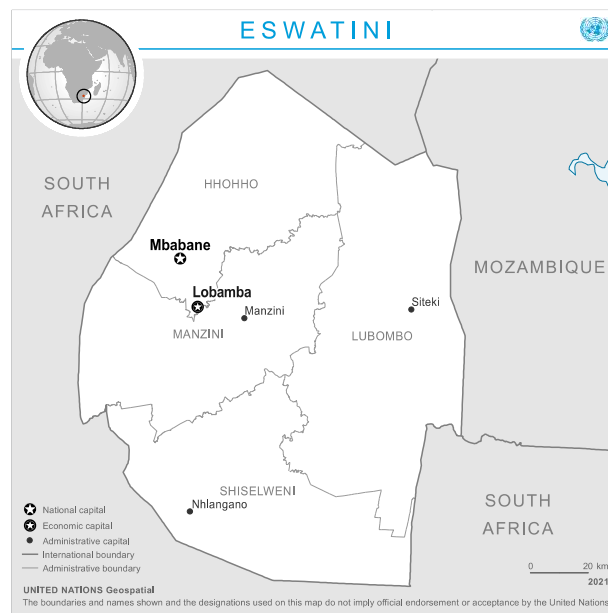


Figure 1: Map of Eswatini [source: UN Geospatial, location data for a better world]

The current estimated population of the Kingdom of Eswatini (Eswatini) is 1,210,822 (UN estimate 01 July 2023),<sup>7</sup> with 34% of the population below the age of 15 and 62% of the population in the age range 15 to 62. According to the latest UNDP Human Development Index Report life expectancy at birth is 56.4 years,<sup>8</sup> with leading cause of death being HIV/AIDS.<sup>9</sup> The population is predominantly Swazi, with smaller populations from other African ethnic groups, including Zulu, as well as people of European ancestry. The official languages are siSwati and English.

<sup>6</sup> The Kingdom of Eswatini was formerly known as the Kingdom of Swaziland. The official name was changed in April 2018.

<sup>7</sup> <https://worldpopulationreview.com/countries/eswatini-population>

<https://www.unfpa.org/data/world-population/SZ>

<sup>8</sup> <https://hdr.undp.org/data-center/specific-country-data#/countries/SWZ>

<sup>9</sup> <https://data.who.int/countries/748>



## Economic structures

According to World Bank data, Eswatini is a lower middle-income country (MIC) with an estimated GDP per capita of USD 3,986 as of 2022.<sup>10</sup>

Eswatini is a member of the Common Monetary Area (CMA), with South Africa, Namibia and Lesotho. Eswatini's national currency, the Lilangeni,<sup>11</sup> is pegged at par to the South African Rand. The 2022 fiscal deficit is estimated at 4.6% of GDP (Gross Domestic Product), similar to 2021, which is a result of fiscal consolidation. This is expected to narrow to 2.1% of GDP in 2024, from 5.1% in 2023, due to a strong rebound in Southern African Customs Union (SACU) receipts in 2023/24.

Eswatini is a member country of SACU with Botswana, Lesotho, Namibia and South Africa. These countries share a common external tariff policy, freely exchange their goods internally, and distribute among themselves the pool of customs and excise taxes collected by the union. Eswatini's largest export and import market is South Africa, at about 65% and 72%, respectively on average.

Eswatini's public debt escalated in recent years, from 26.5% of GDP in 2019 to peak at 41% in 2023 but has remained below the Southern Africa Development Community (SADC) macroeconomic convergence debt/GDP threshold of 60%. The public debt to GDP ratio is poised to decline below the desired 35% of GDP benchmark on account of higher economic growth projections and careful debt contracting considerations by government.

The government remains committed to restore fiscal sustainability and curbing further build-up of domestic arrears, which stood at around 2% of GDP in February 2024 from highs of 7.3% as of end March 2022. To further raise long-term capital, Eswatini plans to issue Rand denominated sovereign bonds on the Johannesburg Stock Exchange. In terms of exchange rate risk, this is deemed to be of low risk to debt distress, given the Rand's parity with the Lilangeni. Economic tailwinds include the huge increase in SACU revenues windfalls and the SACU Stabilization Fund established in 2023 is expected to foster fiscal stability. Headwinds remain due to the higher global inflation, weak growth of South Africa and the outstanding national dialogue following social unrest in June 2021.

Eswatini experienced slow growth over the last decade, that averaged around 2%, which affected the country's efforts to fight its primary development challenges. Growth averaged 3.6%, during the period 2019-23, and was impacted by several factors including the COVID-19 pandemic, weak growth of South Africa, the 2021 civil unrest in Eswatini, climate change related disasters as well as other growth inhibiting structural factors. Growth contracted by 1.6% in 2020, the first time in nearly half a century, due to the pandemic related lockdowns before rebounding in 2021 to 10.7% as demand picked up while the global economy reopened. From a low growth of 0.4% in 2022, the economy recovered to 4.8% in 2023, supported by higher SACU receipts which spurred consumption demand and rejuvenated capital investments. Growth in the medium-term (2024 to 26) is projected to remain moderate, averaging 3.3% and peaking at 4.9% in 2024, anchored on a boost in consumption and increased public sector investments in infrastructure, agriculture, manufacturing, and mining. Government's cash flow challenges have had a negative impact on implementation of construction projects.

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<sup>10</sup> <https://databank.worldbank.org/source/world-development-indicators>

<sup>11</sup> Lilangeni (plural: SZL).



During 2020–21, the Central Bank of Eswatini gradually lowered the discount rate by a cumulative 275 basis points (to 3.75%), to cushion the economy against the COVID-19 impact. However, as global financial conditions tightened in response to high inflation in 2022, the Central Bank of Eswatini raised its policy rate cumulatively by 400 basis points to 7.75% in July 2023, concomitant with the tightening cycle of the SARB, before lowering to 7.5% since August 2023. The inflation rate increased from 2.6% in 2019 to 3.9% in 2020 due to COVID-19 related supply constraints, before slowing down to 3.7% in 2021. In 2022, inflation increased to 4.8%, due to supply chain constraints and high energy costs induced by Russia's invasion of Ukraine and the weak domestic unit, which aggravated imports costs, combined with domestic increases in prices for administered prices and utilities. In 2023, inflation remained elevated, averaging 5% on account of higher food and housing & utilities prices which averaged 12.8%, 4.8% respectively. Inflation risks are elevated but projected to remain within the desired 3-6% range. The 2024 inflation rate is projected at 4.9%. Risks to the inflation outlook include elevated crude oil prices, the weaker exchange rate and higher food prices amidst persistent Russia-Ukraine war, and prospects of lower agriculture yields.

Russia's invasion of Ukraine since February 2022 had worldwide implications through its effects on increasing global inflation and food insecurity, among other impacts. In Eswatini, effects of the war triggered a rapid increase in domestic and international prices of commodities, in particular food, fuel and farming inputs. Linked to the global increases in prices of fuel and food, the main drivers of domestic inflation were food and transport costs. Further exacerbating the situation are extended periods of drought and flooding, contributing to the overall food insecurity in Eswatini. The higher global inflation impacted budget implementation, eroded disposable incomes, and elevated the cost of debt as monetary authorities hiked interest rates to fight inflation. The high inflation negatively affected most of the vulnerable members of society and low-income earners. Using its main macroeconomic management tool, the fiscal policy, the Government implemented measures to mitigate impacts, particularly on the agriculture sector. Through increased external borrowing, Eswatini widened its farming inputs subsidy programme to smallholder farmers which targeted more than 15,000 farmers.

Eswatini has made good progress on access to basic education with gross enrolment rates at 126% for primary and 100% for junior secondary. However, skilling and preparing the youth for a dynamic labour market is a challenge. Enrolments in Technical, Vocational Education and Training are low, partly due to low public investment, fewer qualified academic staff, weak online learning systems and a curriculum that is poorly linked to industry needs, hence fuelling skills mismatch, and youth unemployment. Unemployment declined from 28.2% in 2013 to 22.2% in 2019, before climbing to 33.3% (youth 58.2%) due to company closures brought about by COVID-19. Women dominate the informal business sector with approximately 65% of MSME business owners being female, concentrated in wholesale and agriculture related enterprises.

Eswatini is emerging from the devastating effects of the COVID-19 pandemic. Poverty and inequality, which were worsened by COVID-19, are core development challenges for Eswatini. The country has a Gini index score of 54.6 on inequality in 2016 (51.5 in 2009) and is among the top five most unequal countries in the world. According to the 2017 Household and Income Expenditure Survey, 58.9% of the population live below the national poverty line. Poverty is more pronounced in rural areas (at 70.2%) than urban areas (19.6%). More males live below the poverty line (67%) than females (59.4%). The country's overall Human Development Index declined from 0.622 in 2020 to 0.610 in 2022,<sup>12</sup> which largely reflected a fall

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<sup>12</sup> <https://hdr.undp.org/data-center/specific-country-data#/countries/SWZ>



in life expectancy at birth from 57.9 years in 2020 to 56.4, which puts the country in the Medium human development category. Eswatini is ranked at 142/193 on the 2022 Human Development Index from 141 in 2020 (score 0.610).<sup>13</sup> The country's formal health care sector, organized into three levels – primary, secondary and tertiary health care, receives around 10% of the national budget, mostly for recurrent spending. The sector's challenges include rising non-communicable diseases prevalence, workforce shortages and inadequate healthcare infrastructure. Eswatini has made some progress in prioritizing policies, laws and strategies that promote women's rights, including Constitutional guarantees for gender equality. However, life experiences of most women in Eswatini have remained unchanged and difficult and gender-based violence is highly prevalent.

## Political structures, nature of the political governance system

Eswatini has a dual governance structure, in which the modern parliamentary system consisting of a bicameral Parliament (comprising a House of Assembly and Senate) and the traditional monarchy run concurrently. King Mswati III is the Head of State and appoints the Prime Minister (Head of Government), Cabinet Ministers, and other senior officials. Elections in Eswatini are held every five years, with the most recent election in September 2023. Political parties cannot register and participate in elections. Election to office is, thus, based on individual merit and not on a political party basis. The House of Assembly (lower house) comprises 69 members, of which 59 members are directly elected by the electorate, while the King appoints the other 10 members. The King also appoints 20 members of the 30-seat Senate (upper chamber), with the remainder selected by the House of Assembly. All members of Parliament serve five-year terms. The current Prime Minister, Mr. Russell Dlamini, was appointed in November 2023.

The first level of government in Eswatini is national government. Eswatini is divided into four administrative regions (or districts), each with a Regional Administrator appointed by the King and with a Regional Council with nominated regional members. Each Regional Administration is divided into urban councils (14 municipalities in total) and "Tinkhundla" (59 in total),<sup>14</sup> the latter being a distinctive feature of the system of government in Eswatini, provided for in the Constitution. Tinkhundla are administrative subdivisions with devolved state powers. S.80(3) of the Constitution refers to Tinkhundla as "units or areas inspired by a policy of decentralisation of state power" and as "engines of development and central pillars underpinning the political organization and economic infrastructure of the country through which services to different parts of the Swazi Community are facilitated and delivered." Each Tinkhundla elects one representative to the House of Assembly.

In June 2021, the country experienced social unrest that was triggered by calls for further opening of political space. Following mediation efforts led by the Southern Africa Development Community (SADC) in November 2021, King Mswati III committed to hold an inclusive national dialogue to find a solution to the country's political challenges.

In the 2023 Transparency International Corruption Perceptions Index (CPI), Eswatini has a CPI Score of 30/100 (the same as in 2022) and ranks 130/180. There has been a continued decline in the CPI score since 2017 when it stood at 39 (rank 85/180). There is no Transparency International National Chapter in

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<sup>13</sup> <https://countryeconomy.com/hdi/swaziland>

<sup>14</sup> Ministry of Tinkhundla web page, accessed 05 April 2024.

<https://www.gov.sz/index.php/ministries-departments/ministry-of-tinkhundla-administration/tinkhundla-administration>



Eswatini. Freedom House, Freedom in the World 2023 report,<sup>15</sup> in response to the question “Are safeguards against official corruption strong and effective?” allocates a score of 0/4 and notes that “Corruption is a major problem, and implicated officials generally enjoy impunity”. AfroBarometer 2023<sup>16</sup> findings confirm that majority of those interviewed are of the view that some or most members of parliament, local government, police, judiciary and civil servants are involved in corruption. In the view of 85.1% of respondents, ordinary people reporting incidents of corruption “risk retaliation or other negative consequences.”

According to the 2022 Ibrahim Index of African Governance, Eswatini’s overall governance rank slipped to 35/54 in 2021 (score 43.9) from a constant rank of 34/54 over 2018-20. The country’s rank worsened on participation, rights, and inclusion, from 42/54 in 2020 to 44/54 in 2021, while the rank on security and rule of law dropped from 32/54 to 35/54 during the same period, a reflection of the impact of the severe civil unrest. The country however, improved on the subcategory on human development, where the rank improved from 20/54 to 19/54 in 2021, spurred by improvements in education. Similarly, Eswatini’s scores on the Worldwide Governance Indicators have remained lower than both Africa and global averages, notably on voice and accountability, government effectiveness and control of corruption. The Freedom House findings also accords the country a low rank on political rights, civil liberties and freedom, awarding the country an average global freedom score of 0.18 over 2019-23, much lower than South Africa (0.79), Namibia (0.77), Botswana (0.74) and Lesotho (0.64).

## International obligations

Eswatini is a founder member of the World Trade Organization (WTO). Eswatini is not a signatory to or observer of the WTO Agreement of Government Procurement (GPA). Eswatini is signatory to various regional and international market access agreements, which include the following: SACU, SADC, COMESA, AfCFTA, SADC-EU Economic Partnership Agreement (EPA), SACU-EFTA Free Trade Area (FTA), SACU and Mozambique-UK (EPA), SACU-MERCOSUR Preferential Trade Area (PTA), AGOA, and Generalized System of Preferences (GSP).<sup>17</sup> Eswatini is one of the world’s most trade-dependent economies.

Eswatini is fully committed to start trading under the AfCFTA’s Guided Trade Initiative (GTI) and the country officially began trading under the AfCFTA on 31 January 2024. In March 2024, Eswatini launched its AfCFTA Implementation Strategy aimed at making Eswatini one of the top 10 intra-regional exporters of value-added goods and services. Eswatini submitted its AfCFTA offer under SACU, which sets a common external tariff with third parties and determines most of its commitments in most trade agreements.

Eswatini is a member of and signatory to various other international agreements, including: the UN Human Rights Conventions/covenant, and the International Labor Organization (ILO) conventions.

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<sup>15</sup> <https://freedomhouse.org/country/eswatini/freedom-world/2023>  
accessed 05 April 2024

<sup>16</sup> <https://www.afrobarometer.org/wp-content/uploads/2023/11/Summary-of-results-Eswatini-R9-Afrobarometer-24nov23.pdf>

<sup>17</sup> Acronyms: SACU - Southern African Customs Union; SADC- Southern Africa Development Community; COMESA - Common Market for Eastern and Southern Africa; AfCFTA- African Continental Free Trade Area, SADC-EU - SADC-European Union; SACU-EFTA – SACU-European Free Trade Area; SACU-MERCOSUR SACU - Mercado Común del Sur (Southern Common Market); AGOA - African Growth and Opportunity Act(US)



Eswatini is a signatory to/has ratified the following UN conventions/covenants:<sup>18</sup> the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child (and optional protocols), and the Convention on the Rights of Persons with Disabilities. Eswatini has ratified 8 out of 10 of the ILO Fundamental Conventions.<sup>19</sup> Eswatini is also a signatory to United Nations Convention Against Corruption (UNCAC).

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

Public procurement in Eswatini covers procurement of goods, works and services (consulting and non-consulting services) by procuring entities using public funds. Procuring entities fall within one of three categories: Central Government (Ministries and Departments), Local Government and Category A Parastatals (enterprises which are majority Government owned or controlled). The ESPPRA's Annual Report 2020/2021 lists 91 procuring entities in total: 25 Central Government procuring entities, 13 Local Government procuring entities and 53 Category A Parastatals.

The Government spends a significant amount of public funds on public procurement. According to the Ministry of Finance Expenditure Estimates, the Kingdom of Eswatini spent SZL 20 billion in 2018/19 which was 32% of GDP, SZL 21.7 billion in 2019/20 which was 33.5% of GDP and SZL 22.6 billion in 2020/21 which was 34% of GDP. According to a study commissioned by ESPPRA from the Eswatini Economic Policy Analysis and Research Centre (ESEPARC) for development of a price catalogue, national procurement expenditure stood at SZL 17.7 billion in 2021/2022, which was 22.6% of GDP.<sup>20</sup>

The four key central institutions in the operation of the procurement system are Ministry of Finance and departments within the Ministry of Finance, Eswatini Public Procurement Regulatory Agency (ESPPRA), Independent Review Committee (IRC) and Eswatini Government Tender Board (EGTB).

**Ministry of Finance (MoF):** The Ministry of Finance is the lead Ministry with responsibility for public procurement. There are a number of departments within the MoF with roles directly related to or having a significant involvement with public procurement. These are outlined below:

- **Supply Chain Management Department**, headed by the Director of Supply Chain Management, is responsible for the provision of Supply Chain Management (SCM) advice and support to the Government of Eswatini, especially the MoF, including “whole-of-government” SCM and procurement reform.<sup>21</sup> The SCM Department has had a key role in the conduct and conclusion of negotiations for the contract for the new IFMIS (Integrated Financial Management Information System) and e-GP system.

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<sup>18</sup> Source: UN Treaty Body Database

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN)

<sup>19</sup> [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103336](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103336)

<sup>20</sup> Information provided by ESPPRA, April 2024.

<sup>21</sup> Government website, accessed 04 March 2024.





- **Technical Secretariat** which sits within the SCM Department of the Ministry of Finance. According to the Procurement Act s.32, the Technical Secretariat has two responsibilities: (a) the management of designated procurement activities as a lead procurement organisation in accordance with section 31 of the Procurement Act; and (b) providing secretarial services for the Eswatini Government Tender Board (EGTB). The Procurement Act and PPR allocate some other specific activities to the Technical Secretariat some of which relate to all procuring entities. In practice, the Technical Secretariat carries out activities only in respect of central government procuring entities.<sup>22</sup> The Technical Secretariat provides day-to-day advice, support and assistance to Ministries and Departments on the conduct of procurement, providing standard document templates and advising on use of standard procurement documents published by the Ministry of Finance and undertaking pre-tender quality assurance of tender documents prepared by Ministries and Departments. In addition, it receives and reviews annual procurement plans from Ministries and Departments.
- **Central Government Stores** which handles procurement of common use items including for central government using framework contracts. Central Government Stores run the tender process, including advertising in newspapers and on the ESPPRA and Government website, conducts pre-qualification, shortlisting and acceptance of prices against specifications. The list of bidders appointed to each framework is published, together with agreed prices. In 2022/2023 the list of common use items included grocery/food items, computer consumables and accessories, office furniture and fittings, liquified petroleum gas, stationery, protective clothing and uniforms, blinds and curtaining materials, and cleaning materials and chemicals.
- **Public Enterprises Unit (PEU)** which is established pursuant to the Public Enterprises (Control and Monitoring) Act 1989 (PE Act) s.3, with various functions relating to the activities of Category A parastatals, including to monitor and review their financial affairs and budgets, establish performance targets, undertake periodic reviews and identify problems with producing accounts and budgets and providing or arranging technical assistance.

**Eswatini Public Procurement Regulatory Agency (ESPPRA):** The Procurement Act s.9 established the Public Procurement Regulatory Agency (now ESPPRA) to serve as an independent regulatory body. According to the Procurement Act, the ESPPRA has responsibility for “policy, regulation, oversight, professional development and information management and dissemination in the field of public procurement.” The Procurement Act s.10 lists the Functions of the Agency, expanding on its designated responsibilities for policy formulation, regulation, oversight, capacity building & professionalisation, and data & information management. The Procurement Act s.11, confirms that ESPPRA “shall have the competence, authority, power and responsibility to enforce [the Procurement Act] and public procurement regulations issued under [the Procurement Act]” and lists powers the Agency has in the exercise of its functions. The PPR include further detailed requirements to support the functioning of the ESPPRA. In practice, ESPPRA provides day-to-day advice support and assistance to local government and Category A parastatals on the conduct of procurement including quality/compliance review of bidding documents. On some occasions and for specified activities it also provides these services to Ministries.

**Independent Review Committee (IRC):** The Procurement Act provides tenderers with a right to administrative review of a decision made by a procuring entity. The application for administrative review,

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<sup>22</sup> See analysis at section 3 of this Report.



which must be submitted in writing, is investigated and decided by an Independent Review Committee (IRC), which is appointed on a case-by-case basis from a standing list of IRC members who are appointed following public advertisement inviting expressions of interest. The IRC appointment process and secretariat services are provided by ESPPRA.

**Eswatini Government Tender Board:** The Procurement Act ss.24 & 27 establishes a hierarchy of approvals for authorised decision making in relation to public procurement processes, using the concept of an “approvals authority”. The Eswatini Government Tender Board acts as the approvals authority where the value of a proposed procurement exceeds the designated level of authority of a procuring entity’s own tender board (Entity Tender Board). Procuring entities may establish their own Entity Tender Board after successful conclusion of a formal procurement workload and capacity assessment conducted by the ESPPRA. Twenty-two (22) procuring entities have been authorised to establish an Entity Tender Board, with the level of authority designated on a case-by-case basis, with some additional procuring entities being permitted to establish Entity Tender Board on an interim basis. For the remaining procuring entities without their own Entity Tender Board, including procuring entities in Central Government, the Eswatini Government Tender Board is the approvals authority for all procurements over SZL 20,000 (twenty thousand) (approximately USD 1070) for goods and services and SZL 50,000 (fifty thousand) (approximately USD 2670) for works.

In addition, the Construction Industry Council (CIC) is an important institution in the context of construction related procurement. The CIC is established pursuant to the Construction Industry Council Act No.14 of 2013 to regulate, develop and promote the construction industry for the benefit of all stakeholders. All companies involved in the construction sector are required to be registered with the CIC. The Micro, Small and Medium Enterprises (MSME) Department in the Ministry of Commerce, Industry and Trade plays an active role in supporting development and engagement of small and micro enterprises in public procurement.

In addition to the institutions referred to above and the 91 procuring entities, other stakeholders who influence the operating environment of public procurement, and with whom the MAPS Assessment team engaged, are mapped below.





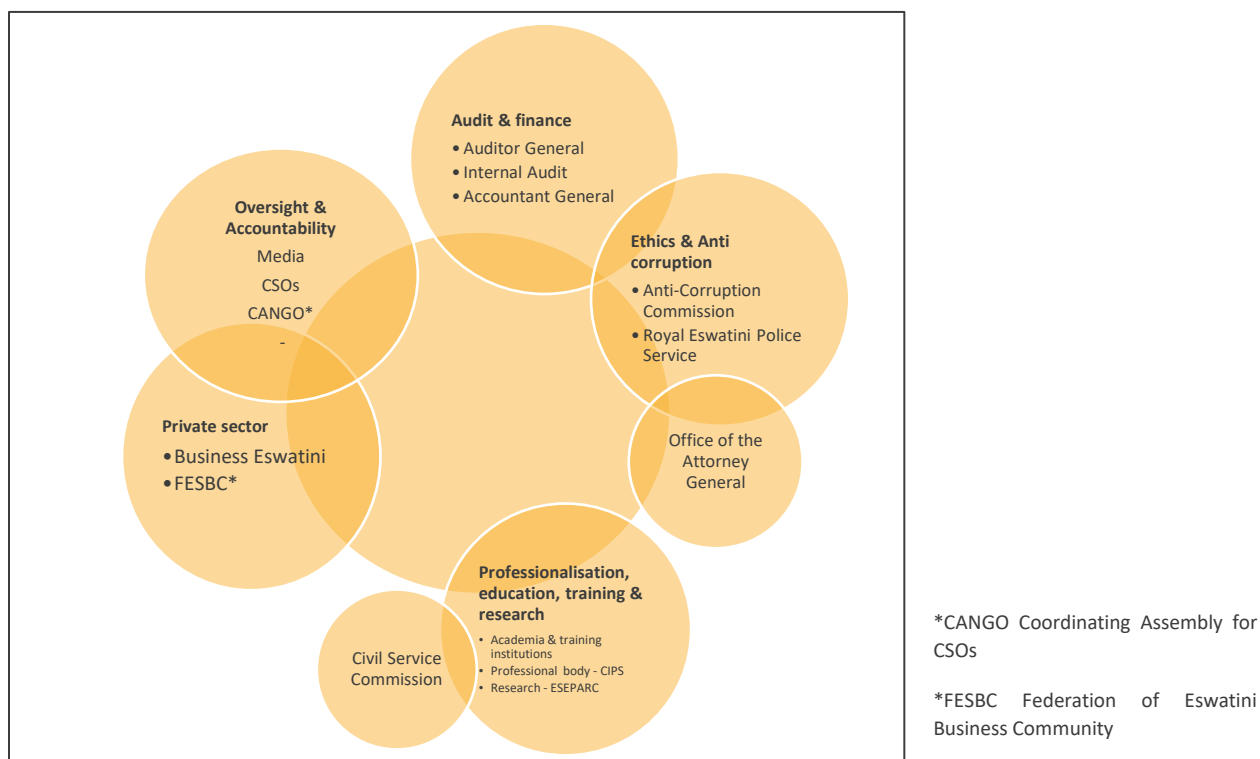


Figure 2: Mapping of other stakeholders

The note below provides information on the roles/activities of the stakeholders mapped in Figure 2 above and flags, for the purposes of this MAPs Assessment, examples of ways in which these stakeholders are involved in and may influence the public procurement system.

- Audit & Finance:** Section 207 of the Constitution establishes the independent public Office of the Auditor General (OAG) as the supreme audit institution, to audit and report on public accounts of Eswatini and all offices, courts and authorities of the Government. The Internal Audit Office provides internal audit services to central government including Ministries. According to the PFMA, the Accountant General provides the accounting functions and leadership for those functions throughout Government. These three stakeholders thus have a critical part to play in ensuring effective control and audit through systems and a control framework, which has a day to day impact on the conduct of public procurement. Auditors are also able to provide valuable insights into how public procurement is conducted in practice and whether delivery of services to citizens is achieved in the most economic, efficient and effective manner.
- Ethics and anti-corruption:** The Anti-Corruption Commission (ACC) is established pursuant to the Prevention of Corruption Act (POCA) with an Operations Department tasked with investigation of alleged corrupt activities, prevention and education. The Royal Eswatini Police Service (REPS), established by the Constitution and governed by the Police Act, is mandated to uphold law and order, prevent and detect crime, protect life and property, and maintain public safety in Eswatini. REPS may also receive and investigate reports or allegations of procurement-related corruption activities. POCA requires persons within procuring institutions with positions of authority to report known or suspected corrupt activities to the ACC and REPS and both bodies also provide a means for the public



to report allegations, including anonymously. There is also interaction with auditors as part of the overall control framework. ACC and REPS thus have a key role in the oversight, enforcement and accountability with particular focus on anti-corruption issues which have a significant impact on the perception and practice of public procurement.

- **Office of the Attorney General:** Core activities of the Office of the Attorney General is providing advice on legislative processes, preparing draft legislation on instruction from Ministries and amending legislation. The Office of the Attorney General also advises Ministries on requirements for consultation on proposed legislation. The Office of the Attorney General delivers an important role in the development and delivery of the procurement legislative framework. The Office of the Attorney General also works directly with ACC and REPS in the prosecution of corruption cases which may include corruption related matters.
- **Professionalisation, education, training & research:** Stakeholders involved in professionalisation, education and training, such as the Institute for Development Management, Eswatini Higher Education Council and Chartered Institute of Purchasing and Supply are essential to build and maintain capacity and develop and improve the public procurement system. Research organisations (ESEPARC (Eswatini Economic Policy and Research Centre)) provide extremely valuable insight into procurement in practice and assist in identifying areas for improvement.
- **Civil Service Commission:** Staff within central government undertaking procurement roles are civil servants, with the recruitment process conducted by the Civil Service Commission. Activities of the Civil Service Commission are thus highly relevant to the professionalisation agenda.
- **Private Sector:** Engagement with private sector stakeholders brings a unique perspective to the understanding of operation of the procurement system in practice as well as valuable suggestions and input for proposals for improvements and reform. Two key representative organisations in the Eswatini context are Business Eswatini (representing larger businesses) and FESBC (Federation of Eswatini Business Community, representing informal, micro, small & medium, women-owned business sectors).
- **Oversight and accountability:** Civil society organisations, such as CANGO (the coordinating assembly for CSOs) and its member CSOs provide independent citizen-led perspectives on the operation of the procurement system in practice and on proposals for improvements and reform. Media institutions, including newspapers, television, radio and social media, have potential to facilitate public procurement oversight and influence public opinion including through active reporting of on instances of lapses in procurement or alleged misuse of public funds, as well as promoting public debate.

## 2.3. National policy objectives and sustainable development goals

Poor fiscal management is a major hindrance to achieving effective public procurement with value for money outcomes. Eswatini's National Development Plan 2023/24-2027/28 (NDP) acknowledges "long-term economic malpractices and poor execution of public expenditures, as well as lack of centralised oversight and controls" noting that "commitments are made on behalf of Government without central authority's knowledge and approval", with the current budget approach allowing for a situation "in which non-representative groups can have more influence and an environment where corruption is more



extensive.”<sup>23</sup> The first listed key objective of the NDP is “implementation of good governance principles to ensure sound economic management - public finance management, fiscal stability and gaining efficiencies, elimination for corruption, respect to the rule of law and human rights.”

Key tools to improve accountability and transparency in fiscal management include introduction and use of both an Integrated Financial Management System (IFMIS) and Treasury Single Account (TSA). These are not currently available and fully operational in Eswatini. In its 2023 Country Report,<sup>24</sup> the International Monetary Fund flagged the essential importance of continued reforms to strengthen public financial management, noting that the implementation of a TSA “is a high priority, followed by a well-designed” IFMIS. The EU has provided funding for implementation of IFMIS but, according to the NDP, “the system remains incomplete and further work to fully develop it is delayed.”<sup>25</sup> Budget resources were allocated in the financial year 2023/24 to procure the IFMIS and e-Government Procurement System. At the end of 2023, the Government of Eswatini concluded negotiations with the Rwanda Corporation (a Rwandan government owned company) for the provision of both systems (see further information at s.2.4 below).

In the National Development Plan 2023/24-2027/28 the government of Eswatini reiterates its commitment to the African Union Agenda 2063,<sup>26</sup> the continent’s strategic framework that aims to deliver on the goal of inclusive and sustainable development, and UN Sustainable Development Goals (SDG) the (Agenda 2030). The NDP sets out a Monitoring and Evaluation Framework for measuring achievement against the African Union Agenda 2063 and SDG Indicators. Eswatini currently ranks 132/166 in the SDG Index with an SDG Index Score of 57.9/100, with limited progress noted on 50% of the SDGs.<sup>27</sup>

The NDP describes a number of strategic goals and related measures for implementation which will have a direct impact on public procurement, including at operational level. These include the strategic goals of: good governance, economic recovery and macro-fiscal stability; enhanced and dynamic private sector that supports inclusive and sustainable growth; enhanced social and human capital development and sustainable livelihoods; efficient public service delivery that respects human rights, justice and the rule of law; well managed natural resources and environmental sustainability; investment in infrastructure to expand economic network and digital innovation. The NDP highlights the need to mainstream climate change, environment and disaster risk in the planning and budgeting process, stating that priority will be given to climate proofing capital projects and “integrating climate change during procurement and implementation as well as developing strategies that mitigate the impact of drought”.<sup>28</sup> The NDP also flags a strategy for enforcing preference margins in the Procurement Act.

There is currently no sustainable public procurement policy/strategy in place to implement Sustainable Public Procurement (SPP) in support of broader national policy objectives.

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<sup>22</sup> See analysis at section 3 of this Report.

<sup>24</sup> IMF Staff Country Reports

<https://www.imf.org/en/Publications/CR/Issues/2023/05/05/Kingdom-of-Eswatini-2023-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-533091>

<sup>25</sup> National Development Plan 2023/24-2027/28, page 22.

<sup>26</sup> <https://au.int/en/agenda2063/overview>

<sup>27</sup> Sustainable Development Report, accessed 05 April 2024

<https://dashboards.sdgindex.org/profiles/eswatini>

<sup>28</sup> National Development Plan 2023/24-2027/28, page 55.



## 2.4. Public Procurement Reform

Prior to this MAPS Assessment there had been no comprehensive country-level public procurement assessment carried out in Eswatini. Review and recommendations on matters closely related or directly applicable to public procurement were, however, flagged in earlier assessments on public expenditure.

In 2006, the World Bank completed a diagnostic study of the public expenditure management system with publication of a Public Expenditure Review. The main conclusion on public expenditure management was that the processes suffered from systemic weaknesses in most critical stages of the budget cycle, with recommendations including improvements in budget execution, reporting and transparency. A Government led and financed Procurement Reform Programme commenced in 2006/7, supported by the Ministry of Finance Supply Chain Management and Corporate Services Directorate and Crown Agents Procurement Reform Team. In January 2007, the European Commission as part of its 2007 Annual Operational Review also published a Public Expenditure and Financial Accountability (PEFA) Public Finance Management Performance Report.<sup>29</sup> Public procurement was identified as an area of serious concern, far from meeting standards of good practice and under-performing in terms of outcomes achieved. In 2008, the Article IV Consultation International Monetary Fund (IMF) Country Report<sup>30</sup> No.356 of 2008 also identified problems with poor coordination of budget execution across Government agencies.

On 1 December 2008, new Public Procurement Regulations (2008 Procurement Regulations), prepared under the Procurement Reform Programme, came into force and repealing some of the provisions of the Stores Regulations 1975.<sup>31,32</sup> The 2008 Procurement Regulations applied to procurement of works, goods and services by Ministries and Departments, but not to local government or public enterprises (state owned enterprises).<sup>33</sup> The 2008 Procurement Regulations were the first set of consolidated “modern” procurement regulations, covering: institutional arrangements including establishment of the Swaziland Tender Board and approvals authorities; procurement of common use items; local preference; procurement planning; general rules applicable to procurement; as well as procurement method and procedures for tendering and less/non-competitive methods of procurement. There were also sections on contract award and contract management.

In 2009/2010, a Country Integrated Fiduciary Assessment (CIFA) applying the PEFA methodology was carried out. The Report (CIFA 2010 Report) was published in 2011.<sup>34</sup> The CIFA 2010 Report noted improvements in the procurement system and referred to the legal framework being in transition, with the 2008 Procurement Regulations issued and the preparation of a new draft Procurement Act (Bill). The CIFA 2010 Report referred to the proposed establishment under the 2008 Procurement Regulations of

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<sup>29</sup> This information is from 2011 PEFA report which quotes the EC 2007 report. Unable to find EC 2007 report.

<sup>30</sup> The Kingdom of Swaziland: 2008 Article IV Consultation – Staff Report, IMF Country Report No.356 of 2008 <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/The-Kingdom-of-Swaziland-2008-Article-IV-Consultation-Staff-Report-Public-Information-Notice-22467>

<sup>31</sup> Prior to 1 December 2008, when conducting procurement government Ministries and Departments applied the Stores Regulations 1975, issued pursuant to s.26 Finance and Audit Act 1967.

<sup>32</sup> The Public Procurement Regulations 2008 repealed Chapters 3 and 14 of Part I of the Stores Regulations 1975, with the rest of the provisions remaining in place.

<sup>33</sup> Public enterprises were subject to the Public Enterprises (Control and Monitoring) Act 1989. For local government purchasing, provisions of the Swaziland Urban Act, 1969 applied.

<sup>34</sup> Public Expenditure and Financial Accountability program and framework for assessing and reporting on the strengths and weakness of public financial management <https://www.pefa.org/sites/pefa/files/assessments/reports/SW-Sep11-CIFA-Public.pdf>



the Swaziland Government Tender Board, and abolition of the Central Tender Board and Treasury Tender Board. It also noted training and support provided to the Swaziland Government Tender Board and the development by the Technical Secretariat of standard documents which were used by some, but not all, procuring entities. At the time of the CIFA 2010 Report there was no procurement complaints mechanism although the establishment of such a mechanism was provided for in the draft Procurement Bill. The CIFA 2010 Report flagged “misappropriation due to weak procurement institution[s], policies and procedures” as an identified risk and recommended continued enhancement of procurement reforms as a medium to longer term systemic PFM reform. Mitigating actions included: approval of the Procurement Bill; establishment of the Swaziland Government Tender Board; strengthening of government institutions; extending application of procurement requirements to public enterprises and sub-national government, and the introduction of post procurement audits and e-procurement.

In 2011, the Procurement Act was passed, coming fully into effect in May 2013 and establishing the Eswatini Public Procurement Regulatory Agency (ESPPRA).<sup>35</sup> <sup>36</sup> The Independent Review Committee became operational in 2016 and IRC Rules of Procedure came into effect on 1 July 2017.

In October 2014, the Board of Directors of the ESPPRA submitted the first draft of the Public Procurement Regulations to the Ministry of Finance. The ESPPRA conducted stakeholder consultation in 2015-2016 on the draft Public Procurement Regulations. For several years there were no procurement regulations implementing the Procurement Act, which was an unsatisfactory situation. The ESPPRA published clarificatory circulars in the interim, pending adoption of the Public Procurement Regulations (PPR) in 2020. The PPR finally came fully into force on 24 May 2021.<sup>37</sup>

The ESPPRA is responsible for the preparation and publication of standard tender (bidding) documents for use by all procuring entities. Preparation of a suite of standard documents has been underway for some years. Consultation on the draft documents was conducted in early 2023, but the standard tender (bidding) documents are not yet published, with reasons for the delay in publication being unclear.

Plans for public enterprise reforms have been in the pipeline for some years. In 2022, the Government announced reform proposals to reduce the number of public enterprises (which include Category A Parastatals which are procuring entities) from 49 to 30, using a phased approach. The reforms are focused on rationalizing the function and size of the public enterprise sector, to improve effectiveness and ensure fiscal sustainability. The reform programme, supported by AfDB grant funding, is ongoing.

In 2024, use of electronic procurement is limited, with on-line activity primarily relating to advertisement of open competitive procurement opportunities in two different “central” locations and in some cases also on the procuring entities’ own websites. The introduction of e-GP has been under consideration for some years and implementation is planned to commence in 2024. By way of background, in 2015, the ESPPRA with technical support from the World Bank conducted a Public Procurement Baseline Study. One of the resulting recommendations was to introduce e-Government Procurement (e-GP) in the country to streamline many issues identified in the manual procurement environment. In 2019, the ESPPRA, with

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<sup>35</sup> The ESPPRA was established on 17 May 2013, with appointment of the Chief Executive Officer being made in November 2013.

<sup>36</sup> For simplicity, the acronym “ESPPRA” is used in this report to refer to Eswatini Public Procurement Regulatory Agency (ESPPRA). The ESPPRA was previously known as the Swaziland Public Procurement Regulatory Agency (SPPRA) and is also often referred to in the procurement legal framework as “the Agency”.

<sup>37</sup> According to the Ministry of Finance (April 2024), the PPR passed by Parliament did not include aspects dealing with parastatals (which had been in earlier draft) and this made the Regulations skewed towards central government.



technical assistance from the World Bank, undertook and published an e-GP Readiness Assessment Report and an e-GP Strategy, aimed at providing information on the e-GP System as well as guidance on its implementation. The e-GP Strategy envisaged introduction and roll-out of an e-GP System over the period 2020 to 2023. The e-GP Strategy for an end-to-end procurement platform was approved in 2021, but implementation is delayed. The e-GP Strategy mandated ESPPRA to lead the e-GP initiative with policy level support from the Ministry of Finance.

Poor fiscal management and record keeping are major hindrances to effective delivery of procurement outcomes. Effective and timely introduction and implementation of both the e-GP system and IFMIS (see above) are of significant importance in driving improvements in public procurement in Eswatini. It is also important to bear in mind the need for wider integration with other government systems such as tax and business registration which should enhance efficiency, integrity and accountability of procurement. In early November 2023, the Ministry of Finance announced that the government had signed a memorandum of understanding with the Government of Rwanda (Rwanda Cooperation Initiative) to work on development and customisation of both an Integrated Financial Management System (IFMIS) and an Electronic Government Procurement System (e-GP). According to reports of the announcement by the Ministry of Finance, the project will be conducted in collaboration with the Ministries of ICT, Economic Planning and Development, Public Services, Royal Science and Technology Park (RSTP) and ESPPRA. The technical team for implementation of e-GP is drawn from the Ministry of Finance, Ministry of ICT, RSTP and ESPPRA.<sup>38</sup>

## 3. Assessment

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

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

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<sup>38</sup> Government of Eswatini, Official Twitter account, 02 November 2023; article in Eswatini Financial Times, November 2023.





## 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.

- **Synthesis of the indicator**

Most of the criteria under Indicator 1 are satisfied. The legal and regulatory framework for public procurement is organized hierarchically, published and publicly available on-line, with the Procurement Act 2011 (Procurement Act) being the primary source. A range of competitive and less competitive procurement methods is listed and two stage tendering as well as simpler methods for low value procurements can be used. Standards for competitive procedures are specified, but there is strong evidence that these provisions are not working effectively and do not achieve the intended aim of ensuring that open tendering is the preferred method for procurement.

Public advertisement of procurement opportunities is required, with minimum tendering periods specified. In practice, two websites are used for publication, reducing the efficiency and transparency of the system. Eligibility, qualification and exclusion is covered by the legal framework which also specifies the minimum content of procurement documents and provides potential bidders with the right to request clarification. Evaluation criteria and the methodology for determining the lowest or best evaluated tender must be specified in the procurement document. Price and non-price attributes may be used although there is no specific reference to life-cycle costs. The legal framework sets out requirements for submission and receipt of tenders, which must be treated as confidential.

Price preference and other measures are permitted, with a view to promoting economic capacity and competitiveness of businesses in Eswatini. The preference provisions are not excessive and do not constitute a barrier to entry for the purposes of the MAPS Methodology. In the construction sector, it is mandatory for international companies to work in partnership or joint working with domestic companies. This requirement raises concerns as a potential barrier to entry which may reduce competition and value for money outcomes.

There is a functioning independent review system. Bidders can challenge decisions or actions taken by a procuring entity, by way of initial application to the procuring entity conducting the procurement. There is a right to apply for administrative review to the Independent Review Committee (IRC) within a specified time period. An application to the IRC triggers suspension of contract award, pending completion of the administrative review process. The IRC has authority to grant a range of remedies and there is a right to apply for judicial review by the Courts.

The legal framework defines the procurement process to include contract management, which is a function to be fulfilled by procuring entities. There is a comprehensive list in the legal framework of procurement records and documents to be retained at operational level, including relating to contract management. In practice, however, there is substantial evidence that record keeping is poor in many cases which has a negative impact across the procurement cycle. The introduction of an end-to-end e-GP system should go some way to improve this situation. In order to facilitate roll out of e-GP to apply to the



full procurement cycle, measures should be taken now to improve current paper-based procurement and to start to change behaviours.

- **Findings**

The legal and regulatory framework for public procurement is organized hierarchically with clear precedence at primary and secondary legislative levels. The primary legislation is the Procurement Act No. 7 of 2011<sup>39</sup> (“Procurement Act”) which came fully into force on 27 May 2013.<sup>40</sup> There was a prolonged delay in the adoption of the secondary legislation in support of the Procurement Act. The Public Procurement Regulations 2020 (PPR) came fully into effect on 24 May 2021. Pursuant to Procurement Act s.10, the ESPPRA issues Circulars to assist in implementation of the Procurement Act and PPR. The Ministry of Finance also issues procurement related circulars addressed to Ministries/Departments and the Eswatini Government Tender Board, where relevant.

According to the Procurement Act, open tendering is the preferred method for procurement of all goods, works and non-consultancy services over designated thresholds. Other procurement methods are listed in the PPR. The procurement methods prescribed include competitive and less competitive methods, two stage tendering as well as simpler methods for low value procurements. The Procurement Act prohibits fractioning of contracts to avoid open tendering or other competitive procurement method.

Methods other than open tendering and requests for proposals in the case of consultancy services may only be used where specified conditions are met. The Procurement Act s.6 requires procuring entities wishing to deviate from the use of a public procurement method to apply to the ESPPRA for prior authorisation where the value exceeds designated thresholds listed in the PPR. All applications to the ESPPRA for deviations must be made before the procurement is conducted and fall within listed circumstances. In the case of international open tendering for construction contracts, the Construction Industry Council registration requirements impose financial thresholds for international participation in most cases and prohibits award of contracts to unregistered contractors. Provisions in the legal framework restrict individual agencies’ and procurement officials’ discretion on choice of procurement methods, in theory limiting the use of less competitive procurement methods. In practice, the use of less and non-competitive procurement methods is high and use of two stage methods was not observed by the MAPS Assessment Team.

The legal framework requires public advertisement of procurement opportunities, with minimum tendering periods specified. The time allowed for potential bidders to obtain documents and respond to the advertisement is sufficient and varies according to the method of procurement and is extended when international competition is solicited. Publication of open tenders is mandated in a newspaper of wide national circulation and also on the Government website. In practice, two websites are used for on-line publication which reduces efficiency of the system. In general, central government procuring entities use the Government website and Local Government and Category A parastatals use the ESPPRA’s tender portal. The ESPPRA charges procuring entities a fee for publication of tender opportunities on its website. Access by suppliers to both websites is free of charge to suppliers. The content of tender notices

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<sup>39</sup> The Procurement Act No.7 of 2011; Swaziland Government Gazette, VOL. XLIX, No.97 September 9, 2011.

<sup>40</sup> Public Procurement Act (Date of Commencement) Notice, 2012, Swaziland Government Gazette, VOL. XLXJ, No.23 March 9 2012 & Procurement Act (Date of Commencement) Notice, 2013, Swaziland Government Gazette, VOL. LIJ, No.64 May 28, 2013.





prescribed in the PPR is sufficient to allow potential bidders to determine whether they are able to submit a bid and also whether they are interested in submitting one. The type and content of documents published on-line in support of tender notices varies.

The rules on eligibility, qualification and exclusion of interested parties seeking to participate in a tender process are set out in the Procurement Act. These rules require participation of interested parties to be established in a fair manner and in accordance with specified conditions. The legal and regulatory framework details eligibility requirements and provides for exclusion relating to certain criminal offences, although it does not include specific provisions listing grounds for ineligibility due to conviction by final judgment for specified offences concerning organised crime, terrorism and trafficking; money laundering, or; child labour. There is a system for administrative debarment under the auspices of the ESPPRA, according to due process and subject to a right of appeal. In practice the number of debarments is very low.<sup>41</sup>

All invitation documents must state eligibility requirements and qualification criteria. In open tendering, assessment of a bidder's eligibility and ability to perform a specific contract may be conducted with or without pre-qualification. A separate pre-qualification process may be used in circumstances which are specified in the PRR, including where the contract is complex, specialized or requires a detailed design or method, but use of this type of two stage procurement is infrequent.

The legal framework establishes rules for participation of state-owned enterprises as service/consultancy providers which are aimed at promoting fair competition. There are no equivalent rules for participation of state-owned enterprises as potential suppliers of goods or as works contractors.

The legal framework permits use of price preference and other measures to facilitate participation of Swati companies, with a view to promoting economic capacity and competitiveness of businesses in Eswatini. The preference provisions are not excessive and do not constitute a barrier to entry for the purposes of the MAPS Methodology. The mandatory requirements for international companies or firms in construction contracts to work in partnership or joint working with domestic companies do, however, raise concerns as a barrier to entry which may reduce competition and value for money outcomes.

The PPR lists the minimum content of procurement documents, which is relevant and sufficient for suppliers to respond to the requirements of the procuring entity. Potential bidder may request clarifications of procurement documents and procuring entities are required to respond within appropriate timescales with clarifications provided to all tenderers in writing.

The principle of use of neutral specifications for goods, works and services is recognised in the legal framework although there is no specific reference to citing of international norms. Use of functional specifications and the principle of equivalence is specifically referenced in the case of goods.

The legal framework requires the evaluation criteria and methodology for determining the lowest or best evaluated tender to be specified in the invitation document. The PPR allow the use of price and also non-price attributes, using "additional evaluation criteria" but there is no specific reference to use of life-cycle cost or whole life cost. There is no published guidance to support procuring entities in the choice and

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<sup>41</sup> One supplier listed: ESPPRA website, Register of suspended suppliers, accessed 02 November 2023.



application of non-price evaluation criteria and weightings. For consulting services, Quality and Cost Based selection is the preferred selection procedure and the legal framework includes procedures and methodologies for assessment of technical capacity.

The legal framework requires all details of tenders submitted to be treated as confidential between the tenderer and the procuring entity, with specific reference to bidders' proprietary information. It requires procuring entities, public officials and politicians involved in procurement to keep confidential information coming into their possession relating to procurement. The PPR set out requirements for submission and receipt of tenders, details of which must be included in the tender documents issued to bidders. They also regulate the tender opening procedure and provide that the time for tendering opening shall be the same as, or immediately after, the time of dealing for submission of tenders. The PPR require records of proceedings for bid openings to be made and retained. There is a specific requirement that procuring entities must provide access to records of proceedings and other procurement records to external audit, internal audit and ESPPRA.

Tenderers have a right of review, to challenge decisions or actions taken by a procuring entity. The initial application for review is submitted to and considered by the controlling officer or Chief Executive Officer of the procuring entity conducting the procurement. The Procurement Act provides tenderers with a right to administrative review of a review decision made by a procuring entity and establishes the matters which are subject to review. The application for administrative review is to the Independent Review Committee (IRC). Submission of an application for administrative review, which must be made within defined time periods, triggers suspension of award of the contract pending completion of the administrative review process. The IRC has authority to grant a range of remedies and the legal framework also establishes a right for judicial review of an IRC decision by the Courts. There is a timeframe of fifteen working days after submission of the application for administrative review within which the IRC shall make and deliver its decision to the parties concerned but this time frame is rarely met. There is no specified time period for publication of IRC decisions on the ESPPRA website but, save in exceptional cases, decisions are published very promptly after they have been made.

The legal framework defines the procurement process to include contract management. It designates management of contracts as a function to be fulfilled by procuring entities, as well as setting out a list of contract management responsibilities. In discussions with the MAPS Assessment Team, stakeholders consistently confirmed that proactive contract implementation and contract performance appraisal are limited. The legal and regulatory framework contains provisions concerning contract amendments but these relate primarily to the process for preparing amendments and obtaining approval. There are no provisions in the Procurement Act or PPR concerning processes for dispute resolution during the performance of the contract. Dispute resolution is addressed in the contract terms, with an initial requirement to seek amicable resolution of disputes moving on to various methods of dispute resolution as specified in the contracts. Arbitration awards, including foreign arbitral awards, can be enforced through the Courts. Contractual disputes may also be referred to the Courts but there are significant delays in the court system meaning that contractual disputes pursued through the Courts are unlikely to be resolved promptly.

The Procurement Act envisages the introduction of e-procurement solutions and mandates the ESPPRA to explore options, make recommendations and issue circulars and instructions to support introduction of e-procurement solutions. Dating from 2011, the Procurement Act does not contain more detailed



provisions on use of e-procurement to support current practice. There are no provisions in the current legal framework that ensure the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication or to require interested parties to be informed which part of the process will be managed electronically. The current developments in the adoption and roll-out of a new e-Government Procurement system (e-GP system) are noted under Pillar II below.

The PPR set out a comprehensive list of procurement records and documents to be retained at operational level, including documents and correspondence relating to contract management. In practice, however, there is substantial evidence that record keeping is poor in many cases. There are no provisions in the procurement legal framework outlining what is available for public inspection and conditions for access. There are no established security protocols to protect public procurement records, physical and/or electronic. There are requirements in the PPR to retain documents for specified periods but the standard period of 5 years for retention of records is relatively short, raising the possibility of loss of relevant evidence in some cases, for example, for prosecution of fraud and corruption offences.

There is no specialised legislation governing procurement by entities operating in specific sectors. Contracts for infrastructure on the basis of private financing and for award of concessions must be awarded in accordance with the principles and objectives of the Procurement Act and Government policy. Special methods and procedures may be specified in regulations. In practice, public private partnership (PPP) activity has been limited, The Ministry of Finance has overall responsibility for implementation of PPP policy and the legal and institutional framework to facilitate implementation of PPPs is currently subject to review.<sup>42</sup>

- **Gaps**

**Appropriate standards for competitive procedures:** The legislative framework specifies standards for competitive procedures and provides safeguards but there is strong evidence that these provisions are not working effectively and do not achieve the intended aim of ensuring that competitive procurement is the preferred method for procurement. There are high levels of use of emergency single source/single source as a method of procurement. This reduces opportunities for market competition and diminishes the transparency and integrity of the procurement system. Value for money is a less likely outcome where direct award is used. This Gap significantly impedes achieving competition and value for money outcomes, impacting on the overall effectiveness of the procurement system.

**International participation:** The mandatory requirement for international companies or firms in construction contracts to work in partnership or joint working with domestic companies (CIC Act ss.41 & 42) constitutes a barrier to entry and may reduce competition and value for money outcomes.

► This Gap is assigned a Red flag because it may impede achieving competition and value for money outcomes, impacting on the overall effectiveness of the procurement system and because it will require joint review and decision making by stakeholder institutions and does not lie solely within the procurement sphere.

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<sup>42</sup> Review of PPP should include consideration of definition of PPP to ensure that it aligns with current international practice.



**Rules for participation of state enterprises:** The legal framework does not establish rules for state-owned enterprises participating as suppliers of works or goods. This may jeopardise fair competition as state-owned enterprises may have an unfair advantage over other bidders because, for example, they benefit from subsidies, tax exemptions or other forms of preferential treatment.

**International norms and functional specifications:** There is no specific reference to use of international norms, or other recognized equivalent norms, in the legal framework and use of functional specifications is referred to only in the case of goods.

**Equivalence:** There is no specific reference to application of the principle of equivalence when neutral specifications are not available in the case of procurement of services or works. There is reference in the case of goods.

**Contract amendments:** The legal and regulatory framework contains provisions concerning contract amendments but these relate primarily to the process for preparing amendments and obtaining approval. It does not, however, list or define in detail the circumstances and conditions where contract amendments, including extensions, are permitted. Thus there are no clear statutory requirements enabling procuring entities and suppliers to understand what is or is not permitted, which creates legal uncertainty. Nor is there a clear legal framework in the PA or PPR to guide approvals authorities in their decision making on requests for approval of amendments, potentially resulting in inconsistency in that decision making. Inappropriate or over use of contract amendments can reduce value for money and limit competition and the likelihood of use of amendments, for example to remedy poor planning, will be higher if condition for use are not carefully prescribed.

**Dispute resolution:** There are no provisions in the Procurement Act or PPR concerning processes for dispute resolution during the performance of the contract. Dispute resolution provisions may be included in contract terms used by procuring entities, but there is currently no standard suite of contract documents for use by all procuring entities and so legal provisions and practices, after initial attempts to resolve disputes amicably, are inconsistent. Significant delays in the court system mean that this is not an efficient route for dispute resolution.

**Tools and standards for use of e-procurement/e-GP system:** With the proposed introduction of e-GP system within a short time period, it is imperative that the legal framework is updated to specify tools and standards to be applied.

**Informing interested parties of processes to be managed electronically:** With the proposed introduction of a new e-GP system within a short time period, it is imperative that the legal framework is updated to include provisions which make it mandatory to inform potential bidders which parts of the process will be managed electronically.

**Procurement records and documents:** There is a comprehensive list in the PPR of the procurement records and documents to be retained by procuring entities at operational level. In practice, however there is substantial evidence that compliance with record keeping requirements set out in the legal framework is poor in many cases. This can be clearly established from sampled files, reports of the Auditor General, ESPRA compliance audits and through information received direct from stakeholders by the MAPS Assessment team. There are no provisions in the procurement legal framework outlining what is available for public inspection and conditions for access.



► This Gap is assigned a Red flag because it severely limits opportunities to look at implementation performance and it also inhibits the proper functioning of both internal and external control systems. Both of these factors have a significant negative impact on the overall effectiveness of the procurement system. In addition, proactive inter-institutional cooperation beyond the procurement sphere will be required to agree, prepare, implement and support the introduction of relevant and proportionate legal/regulatory provisions plus internal and external control and audit measures to ensure consistent application to all procuring entities, and effective enforcement of requirements for record keeping.

**Document retention period:** The timescales for retention of procurement documents and the limitation period for fraud and corruption period are not aligned, raising the potential that investigations of fraud and corruption may be hampered because relevant procurement documents have not been retained.

► This Gap is assigned a Red Flag because it is likely to impede anti-corruption related activities in the public procurement environment and will require joint review and decision making by various institutional stakeholders, including anti-corruption, finance & procurement institutions as well as the Office of the Attorney General and thus does not lie solely within the procurement sphere.

**Security protocols for protection of records:** There are no established security protocols to protect public procurement records (physical and/or electronic) thus jeopardizing the ability to check implementation performance due to lack of availability of relevant records.

- **Recommendations**

**Appropriate standards for competitive procedures:** Consider enhanced measures, including amendments to the PPR, to ensure that the choice of procurement procedure is, in all cases, clearly documented and justified in accordance with the legal framework and that the terms “emergency” and “emergency situation” are well-defined, to prevent over-use or misuse. This may be tied in with requirements relating to preparation and publication of procurement plans, with justification for use of methods other than open tendering to be addressed in that plan. Implement measures to ensure that use of emergency single source procurement/single source method is permitted only in exceptional circumstances. Key stakeholders (Ministry of Finance Technical Secretariat, ESPPRA and Eswatini Government Tender Board) should collaborate and jointly issue enforceable regulatory provisions, policy and/or guidelines to apply to all procuring entities. This should stress the importance of documenting and justifying choice of procurement methods and emphasise the limited and prescribed circumstances where emergency single source may be used. The policy and/or guidelines should confirm that the circumstances and conditions permitting use of single source procurement/single source method must be interpreted narrowly. This may be tied in with requirements relating to procurement plans for specific procurements with justification for use of methods other than open competitive bidding to be addressed in that plan.

**International participation:** ESPPRA and CIC should review the impact of the requirements for international companies/ in construction contracts to work in partnership or work jointly with domestic companies in the delivery of construction contracts and consider amendment of these provisions to reduce barriers to entry. This review should also clarify registration requirements to ensure it is clear that registration is not a precondition to participation in a tender process.

**Rules for participation of state enterprises:** Include in the legal framework specific rules applying to participation of state-owned enterprises as bidders for the supply of works or goods, aimed at promoting



fair competition. This could be dealt with in the eligibility criteria in standard bidding documents for mandatory use, pending revision of PPR.

**International norms, functional specifications and equivalence:** Update relevant provisions to specifically refer to international or other recognized equivalent norms and to the principle of equivalence for procurement of goods, works and all services. Also include provisions referring to use of functional specifications in the case of all procurements, where relevant. This may be most effectively resolved by including these requirements in standard tender documents for mandatory use by all procuring entities.

**Contract amendments:** Amend the legal/regulatory framework to include provisions on contract amendments which detail the circumstances where they may be permitted and any conditions which must be met. This should assist both procuring entities and suppliers who are seeking the amendments and approvals authorities who are deciding on the efficacy and permissibility of proposed amendments. There should also be a specific requirement for a clear audit trail with written justification for contract amendments (other than minor amendments, to be defined). Provisions on contract amendments must be accompanied by clear, practical guidance and training to ensure that they are well understood and consistently applied.

**Dispute resolution:** The simplest short-term measure to start to improve dispute resolution processes is to introduce consistency in the methods of dispute resolution. The appropriate standard methods may vary according to the type and complexity of the contract. This can be addressed initially by inclusion of appropriate clauses in standard contract documents for mandatory use by all procuring entities.

**Tools and standards for use of e-procurement/e-GP system:** Update the legal framework to include provisions to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures to grant unrestricted and full access to e-procurement. These provisions will need to be comprehensive and tailored to reflect the particularities of the e-GP system in Eswatini. See also, Suggestion for Improvement for updating the legal framework to align with new e-GP system.

**Informing interested parties of processes to be managed electronically:** Update the legal framework to include provisions to make it mandatory to inform potential bidders which parts of the processes will be managed electronically (e.g. availability of procurement documents, communication, bid submission, contract awards, billing and payments etc.). Provisions in the legal framework will need to allow sufficient flexibility to take account of staged roll-out and will need to clarify whether conventional paper-based procurement is still allowed and at what phases of the procurement process.

**Procurement records and documents:** Introduce measures to ensure that procurement records and documents, or where relevant copy documents, are collated and retained in a single file in one location at procuring entity level. These measures should not wait for roll out of e-GP but need to be considered and implemented immediately, to apply consistently to procuring entities, and supported by relevant guidelines and, ideally training, both to address the current Gap and also to facilitate the implementation of e-GP. e-GP is usually introduced in a phased manner with initial focus on use of e-GP to publish contract opportunities and information on contract award. If the e-GP roll out in Eswatini follows this model, it is likely that some procurement records particularly those relating to the conduct of evaluation, remain paper based for some time. This means that proper record keeping at procuring entity level will remain a critical issue.





**Document retention period:** Review the impact of non-availability of procurement related records on effective investigation and prosecution of cases of fraud and corruption. Consider revising requirements for retention of procurement records to better align with limitation periods applying an appropriate risk assessment process to determine appropriate dates for destruction of records and period for retention. The same retention periods must apply to all three types of procuring entities.

**Security protocols for protection of records:** Establish security protocols to protect records of public procurement, both physical and electronic and consider measures, including enforcement, to ensure compliance in a consistent manner by all procuring entities. This will need to be closely aligned with new provisions to be introduced to ensure appropriate alignment with operation of the e-GP system.

- **Suggestions for improvement**

The MAPS Assessment Team has identified areas for improvement which are not classified as Gaps for the purposes of the MAPS Methodology and provides the following suggestions:

**Procurement methods and financial thresholds in legislation:** Procurement methods should, ideally, be established in the primary legislation i.e. the Procurement Act. This is to ensure certainty as to available methods embedded in more stable legislation. See, for example, A.27 UNCITRAL Model Law on Public Procurement and Guide to Enactment. The PPR R.38(4) which does not include reference to financial thresholds as one of the conditions for international participation. To improve clarity, the PPR should be amended to refer to and align with CIC requirements.

**Definition of “Government website”:** The term “Government website” is not defined and in practice procurement related information is published either on the general website of the Government of Eswatini or ESPRA website. Include in the legislative framework precise definitions of website/s where procurement related information must be published currently and allow for transition to use of e-GP for publication of information.

**Eligibility requirements:** Include in the legal and regulatory framework specific provisions listing grounds for ineligibility due to conviction by final judgment for specified organised crime, terrorist and trafficking offences (participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings).

**Quantification of non-material non-conformity:** Review drafting of PPR R.60 (6) on quantification of non-material non-conformity, errors or omissions to decide on fitness for purpose and remove or amend as appropriate.

**Life-cycle costing/total cost of ownership:** Introduce additional provisions in the legal and regulatory framework to promote the use of life cycle costing or total cost of ownership, as appropriate in relevant procurements to ensure value for money decisions. All legal provisions must be supported by clear, practical guidelines on how to incorporate life cycle costing or total cost of ownership into the entire procurement cycle, from planning to delivery. This should be tied in with measures to address sustainable public procurement more widely and recommendations at sub-indicator 3(a) Sustainable Public Procurement.



**Protection of sensitive information:** Consider preparation guidance to provide clarity for all procuring entities on what constitutes specific sensitive information requiring protection from disclosure and how to handle that information.

**Right of judicial review:** When next updating the Procurement Act, to enhance clarity, consider including a specific provision referring to the right of judicial review to the court.

**Publication of IRC decisions:** In practice, IRC decisions are published very promptly on the ESPPRA website and each decision can be downloaded. To further improve opportunities for stakeholders to analyse and understand review decisions consider publishing a consolidated list of IRC decisions and publish all IRC decisions in a machine readable format. To increase clarity in the process, include provisions in the legal/regulatory framework setting out time scales and specific location for publication of IRC decisions.

**Update legal framework to allow for future developments on introduction of new e-GP System:** The legal framework will need to be reviewed to permit and facilitate the introduction and implementation of the new e-GP system. This will require consideration of changes having an impact on the whole procurement cycle, from procurement planning through to contract and performance management, delivery and payment. In order to ensure legal certainty, it is important that this does not lag behind the roll-out in practice and so careful consideration needs to be given to which part of the legal framework will be updated to meet these needs and achieve necessary changes within timescales which mean that the legal framework and e-GP system are aligned in practice.

With the introduction of a new e-GP system it is likely that functionalities will be progressively rolled out. Provisions in the legal framework will need to allow sufficient flexibility to take account of staged roll-out, including stages when end-to-end procurement is conducted partly using e-GP and partly paper-based. In order to facilitate roll out of e-GP to apply to the full procurement cycle, measures should be taken now to improve current paper-based procurement and to start to change behaviours. Examples of immediate improvement measures for activities where e-GP functionalities may be rolled out at a later stage, are record keeping at tender evaluation stage and in contract management, including variations and amendments.

### Summary of substantive gaps and recommendations of Indicator 1

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
1(b)	Appropriate standards for competitive procedures – lack of effective measures	H	Enhanced measures to ensure that the choice of procurement procedure is, in all cases, clearly documented and to limit use of emergency and single source, with clear supporting policy and guidelines





Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
1(d)	International participation - restrictions on international bidders	H ▶	Review impact of restrictions on international participation and consider amendments
	Rules for participation of state enterprises – lack of rules	L	Include in the legal framework specific rules applying to participation of state-owned enterprises as bidders, aimed at promoting fair competition
1(e)	No references to international norms, limited reference to functional specifications	L	Update relevant provisions to specifically refer to international or other recognized equivalent norms and to the principle of equivalence and functionality
	No specific reference to principle of equivalence in specifications	L	
1(i)	Limited provisions on contract amendments	H	Amend the legal/regulatory framework to include provisions on contract amendments which detail the circumstances where they may be permitted and any conditions which must be met
	Lack of consistency in designated methods for dispute resolution	M	Inclusion of appropriate clauses in standard contract documents for mandatory use by all procuring entities
1(j)	No tools and standards for use of e-procurement/e-GP system	M	Update the legal framework to include provisions to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures
	No provision requiring informing interested parties of processes to be managed electronically	M	Update the legal framework to include provisions to make it mandatory to inform potential bidders which parts of the processes will be managed electronically
1(k)	Existing measures insufficient to ensure compliance with requirements for keeping of procurement records and documents	H ▶	Introduce measures to ensure that procurement records and documents are collated and retained in a single file in one location at procuring entity level.
	Non-alignment of timescales for document retention with	H ▶	Review impact and consider revising requirements for retention of procurement records to better align with



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
	limitation period for fraud and corruption		limitation periods and to apply to all types of procuring entities.
	No security protocols to protect public procurement records	M	Establish security protocols to protect records of public procurement, both physical and electronic and consider measures, including enforcement, to ensure compliance in a consistent manner by all procuring entities.

## 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. Ideally the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

### • Synthesis of the indicator

There are comprehensive implementing regulations but no single set of model procurement documents or standard contract conditions for mandatory use by all procuring entities. The Public Procurement Regulations 2020 (PPR) are a consolidated set of regulations which contain detailed provisions implementing the Procurement Act. The PPR are published on the website of the ESPPRA, which is responsible for their formulation and maintenance. In terms of procurement documents and standard contract conditions, the picture is fragmented, with a number of documents and contracts in circulation, some of which require updating. A set of standard tender documents, including contract conditions, has been in preparation by ESPPRA for some years, and was due to be finalised in 2023, but it has not yet been published. There is currently no comprehensive procurement manual.

### • Findings

The Public Procurement Regulations 2020 (PPR) supplement and detail the provisions of the Procurement Act. The PPR apply to all procurement of goods, works and non-consultancy services undertaken by a procuring entity and selection and employment of consultants. The PPR are a single set of consolidated provisions which are clear and comprehensive. They can be downloaded free of charge from the ESPPRA website. Responsibility for formulation and maintenance of regulations lies with the ESPPRA.

There is no common set of model procurement documents or a common standard set of clauses or templates available and mandated for use by all procuring entities. There is no single set or consolidated collection of standard contract conditions for most common types of contracts for mandatory use by all



procuring entities. As a result there are a number of documents and contracts in circulation, presenting a very fragmented picture. Some of the standard documents and contracts in use are out of date. Responsibility for issuing model procurement documents, for mandatory use by all procuring entities, lies with the ESPPRA. A set of standard tender documents, including contract conditions, has been in preparation for some years and was due to be finalised in 2023, but it has not yet been published.

There is currently no comprehensive procurement manual. Responsibility for preparation of public procurement manuals lies with the ESPPRA, which has been preparing a manual for some time. No procurement manual has been issued to date.

## Gaps

**Standard tender documents (model procurement documents) & tender clauses:** There is no single set of model procurement documents (standard tender documents) or standard tender clauses provided for mandatory use by all procuring entities. Some documents used by Ministries are out of date and not aligned with the current legal framework. Lack of universally applicable model procurement documents creates an uneven playing field, potentially hindering competition and reducing confidence in the procurement system, particularly for suppliers who may be faced with different documents and legal provisions when engaging with different procuring entities for similar works, goods and services (consultancy and non-consultancy services). Evidence to date shows that the process for introduction of new standard tender documents has been problematic, with official publication substantially delayed and still not achieved.

**Standard contract documents & contract conditions:** There is no single set or consolidated collection of standard contract documents or conditions for most common types of contracts for mandatory use by all procuring entities. To enhance confidence in the system, particularly from a supplier perspective, it is important to establish, as a minimum, core standard contract conditions which are mandatory for use and consistently applied. Evidence to date shows that the process for introduction of new standard tender documents has been problematic, with official publication substantially delayed and still not achieved.

**Comprehensive procurement manual:** There is no comprehensive procurement manual. This is an important implementation tool that helps turn policy and the legislative/regulatory framework into practice and can help create consistency of application within the public procurement system.

- **Recommendations**

**Standard tender documents & tender clauses and standard contract documents & conditions:** In order to ensure consistency and enhance understanding and application for all stakeholders, prioritise the finalisation and adoption of: (1) a set of standard tender documents with mandatory clauses; and (2) standard contract conditions, and mandate their use by all procuring entities (Central government, local government and category A parastatals). Core standard contract conditions should be fair and balanced and reflect national laws which impact on contracts and their performance.

Ensure that all procuring entities are clearly directed, ideally by means of communications issued jointly by ESPPRA and MoF, to use the new standard tender documents and contract conditions. Consider measures to enforce appropriate use of the standard tender documents and standard contract conditions by all procuring entities.



New standard tender documents and standard contract conditions should be issued by a single institution and supported by clear instructions and guidance on their use which should be issued by that institution at the same time as the standard tender documents and standard contract conditions. In order to further ensure correct use of the documents their launch should be tied in with a programme of training to support procuring entities as well as public dissemination so that suppliers are also aware of the changes. To increase legal certainty, responsibility for review and updating the standard tender documents and standard contract conditions, including mandatory clauses or templates, must be clearly assigned. In order to ensure consistency of use of appropriate procurement documents where standard tender documents are not available or standard contract conditions are inappropriate, responsibility for advising procuring entities on which documents to use should be provided to all procuring entities by a single authority with relevant expertise.

**Comprehensive procurement manual:** Prepare and publish a comprehensive procurement manual covering, as a minimum all procedures for the correct implementation of the Procurement Act and PPR. This should both explain, in easily understandable way, the legal and regulatory requirements together with information on how these requirements are implemented in practice, including reference to relevant standard documents and templates. This procurement manual must be available to and used by all procuring entities (central government, local government and Category A parastatals), to ensure consistency of understanding and practice by all procuring entities.

- **Suggestions for improvement**

The MAPS Assessment Team has identified areas for improvement which are not classified as Gaps for the purposes of the MAPS Methodology and provides the following suggestions:

**Review of PPR:** The PPR were issued in 2020 and became fully operational in May 2021. After three years in operation it is now an appropriate time to undertake a review of the PPR for fitness for purpose for use by all procuring entities and to identify necessary improvements, amendments and additions. This is timely, in the light of the planned implementation and roll out of the new e-GP system. The review process should involve active engagement with stakeholders including procuring entities, private sector suppliers (large, medium, small and micro businesses) and civil society.

**Allocation of responsibility for review and updating standard tender documents:** Responsibility for preparation of standard tender documents is clearly allocated to the ESPPRA and those provisions can be read to include updating. To improve clarity, include specific reference in the legal framework to where responsibility lies for review and updating of the standard tender documents.

**Allocation of responsibility for review and updating procurement manual:** Responsibility for preparation of a manual is clearly allocated to the ESPPRA and those provisions can be read to include review and maintenance. To improve clarity, include specific reference in the legal framework to where responsibility lies for review and updating the manual.

## **Summary of substantive gaps and recommendations of Indicator 2**

Please see full wording of Gaps and Recommendations above.



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
2(b)	No standard tender documents for mandatory use by all procuring entities	H	In order to ensure consistency and enhance understanding and application for all stakeholders, prioritise the finalisation and adoption of: (1) a set of standard tender documents with mandatory clauses; and (2) standard contract conditions, and mandate their use by all procuring entities (Central government, local government and category A parastatals).
2(c)	No standard contract documents/contract conditions for mandatory use by all procuring entities	H	
2(d)	No comprehensive procurement manual	H	Prepare and publish a comprehensive procurement manual covering, as a minimum all procedures for the correct implementation of the Procurement Act and PPR.

### 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.

- Synthesis of the indicator**

The National Development Plan 2023/24-2027/28 sets out a Monitoring and Evaluation Framework for measuring achievement against African Union Agenda 2063 and SDG Indicators. There is no sustainable public procurement policy/strategy in place to implement SPP in support of broader national policy objectives and the Procurement Act does not specifically refer to requirements to use economic, environmental and social criteria in the procurement cycle. The public procurement legal framework in Eswatini appears to be aligned with the requirements of the Common Market for Eastern and Southern Africa (COMESA) Regulations concerning harmonisation of public procurement.

- Findings**

The National Development Plan 2023/24-2027/28 sets out a Monitoring and Evaluation Framework for measuring achievement against African Union Agenda 2063 and SDG Indicators. There is currently no sustainable public procurement policy/strategy in place to implement SPP in support of broader national



policy objectives. There are no provisions in the Procurement Act specifically referencing use of economic, environmental and social criteria in the procurement cycle. The PPR include high-level provisions on environmental issues in procurement at all stages of the procurement lifecycle but no specific references to economic or social issues. There are no detailed legal provisions or supporting guidance on how to apply sustainability criteria to ensure value for money.

Eswatini is a member of the Common Market for Eastern and Southern Africa (COMESA). COMESA has a specific set of Regulations concerning harmonisation of public procurement, issued pursuant to the COMESA Treaty. The public procurement legal framework in Eswatini appears to be aligned with the requirements of those Regulations.

- **Gaps**

**Sustainable Public Procurement policy/strategy & implementation plan:** There is no policy/strategy in place to implement sustainable public procurement (SPP) and thus no implementation plan.

► This Gap is assigned a Red flag because lack of SPP policy/strategy hinders promotion and delivery of sustainable public procurement practices consistent with principles of economy, efficiency and transparency and aligned with national goals. In addition, preparation and agreement on an SPP policy/strategy and implementation plan applying to all procuring entities and aligning with broader national policy objectives will require input from a number of institutions and ministries, with high level government support, and is not solely within the procurement sphere.

**Provisions in legal framework for incorporation of sustainability:** Provisions allowing for sustainability to be incorporated into all stages of the procurement cycle are limited and the main focus is on environmental issues in the context of procurement of goods. There is the possibility of using “additional evaluation criteria” which may include criteria relating to SPP. There is no detailed guidance on when and how to incorporate sustainability at all stages of the procurement cycle.

**Application of sustainability criteria:** Provisions allowing for sustainability to be incorporated into all stages of the procurement cycle are limited. There are no detailed provisions or supporting guidance on how to apply sustainability criteria to ensure value for money.

- **Recommendations**

► **Sustainable Public Procurement policy/strategy and implementation plan, including incorporation of sustainability criteria into all stages of the procurement lifecycle:** Develop a sustainable public procurement policy/strategy to implement SPP (economic, environmental (including climate considerations) and social (including gender equality)) in support of broader national policy objectives and reflecting national priorities. This should include a clear implementation plan/road map to cover introduction of systems and tools to operationalize, facilitate and monitor the application of SPP in priority areas in particular. It should also identify and provide for any amendments necessary to the legal/regulatory framework to allow for sustainability to be fully incorporated at all stages of the procurement cycle ensuring well-balanced application of sustainability criteria from planning through to contract delivery and monitoring. SPP requirements embedded in the legal and regulatory framework should be reflected in model procurement documents (standard tender documents), contract conditions and in supporting practical guidelines for implementation and related training.



### Summary of substantive gaps and recommendations of Indicator 3

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
3(a)	No Sustainable Public Procurement (SPP) strategy/policy and no implementation plan	H ►	Develop a sustainable public procurement policy/strategy for SPP (economic, environmental (including climate considerations) and social (including gender equality)) in support of broader national policy objectives and reflecting national priorities. To include a clear implementation plan/road map to cover introduction of systems and tools to operationalize, facilitate and monitor the application of SPP and identify and provide for any amendments necessary to the legal/regulatory framework to allow for sustainability to be fully incorporated at all stages of the procurement cycle.
	Limited provisions in legal framework for incorporation of sustainability into the procurement cycle	M	
	Limited provisions in legal framework on application of sustainability criteria	M	

## 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.

Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions in charge of necessary functions are in place; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

### 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 given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.





- **Synthesis of the indicator**

A positive development in budget planning is the introduction of a requirement to prepare and submit annual procurement plans. The PFMA prohibits making of commitments with financial implications other than in accordance with the authorised annual budget. In practice, however, solicitation of tenders/proposals and spending take place without necessary authorization and the budgetary and management systems are fragmented. There are no national regulations or measures in place, of universal application to all procuring entities, for processing and authorization of invoices and payments.

- **Findings**

The legal and regulatory framework requires annual procurement plans to be prepared to facilitate the budget planning process. This requirement is a relatively recent introduction and a positive development. The PFMA prohibits expenditure, the making of commitments with financial implications or carrying out of activities funded by public money other than in accordance with the authorised annual budget. In practice, however, the solicitation of tenders/proposals takes place without necessary authorization and spending outside or beyond the appropriated budget is common and a significant problem. The budgetary and management systems are fragmented and functioning mechanisms for reporting on budget execution are limited.

There are no national regulations or measures in place, of universal application to all procuring entities, for processing and authorization of invoices and payments. Payment provisions are currently provided for in individual contract documents with inconsistencies for stated period for payment. In practice, cash flow is an increasing problem which has had a significant impact on delays in undisputed payments. The invoice portal for the Office of the Accountant General is not linked to the payment system so reliable data on invoicing and payment is not available.

- **Gaps**

**Budget commitment controls:** There is no effective commitment control to ensure that only approved expenditures are executed, nor that those expenditures that are approved are executed only up to the approved budget.

► This Gap is assigned a Red flag because control is the cornerstone of budget management and its absence significantly impedes the objectives of transparency, accountability, efficiency and effectiveness of the public procurement system. It also requires action which cannot immediately be mitigated through actions solely in the public procurement sphere. Wider reaching public finance reforms consistently applied across government are required to fully resolve this Gap. In particular, the introduction, implementation and use of a suitable Integrated Financial Management Information System is an underpinning requirement to ensure robust and effective commitment controls. The IFMIS will also need to be effectively integrated with the e-GP system..

**Feedback mechanism on budget execution:** There is no effective comprehensive feedback mechanism on budget execution to ensure timely information on contracts covering major budget expenditure.

► This Gap is assigned a Red flag because lack of feedback on budget execution impedes the objectives of transparency, accountability, efficiency and effectiveness of the public procurement system significantly hindering value for money outcomes. For the Gap to be fully resolved, it also requires action which cannot immediately be mitigated through actions solely in the public procurement system. Wider-





reaching public finance reforms consistently applied across government are required to fully resolve this gap. In particular, the introduction, implementation and use of a suitable Integrated Financial Management Information System is an underpinning requirement to facilitate and effective comprehensive feedback mechanism on budget execution. The IFMIS will also need to be effectively integrated with the e-GP system.

**Solicitation of tenders/procurement without certification of availability of funds:** The legal framework prohibits solicitation of tenders/proposals without available funds but in practice, solicitation of tenders/proposals take place without necessary authorization and without or beyond budget commitments.

► This Gap is assigned a Red flag because control is the cornerstone of budget management and its absence, leading to solicitation of tenders/proposals takes place without necessary authorization and without or beyond budget commitments. This significantly impedes the objectives of transparency, accountability, efficiency and effectiveness of the public procurement system and delivery of value for money outcomes. It also requires action which cannot immediately be mitigated through actions solely in the public procurement system. Wider-reaching public finance reforms consistently applied across government are required to fully resolve this Gap. In particular, the introduction, implementation and use of a suitable Integrated Financial Management Information System is an underpinning requirement to assist in monitoring and enforcement of requirements for necessary authorisations within budget commitments.

**Processing of invoices and authorisation of payments:** There are no consistent national level regulations for processing invoices and authorization of payments. Procedures for processing and authorization are fragmented. Late payment has become a significant problem in practice (see Pillar III).

► This Gap is assigned a Red flag because it substantially impedes the objectives of transparency, accountability, efficiency and effectiveness of the public procurement system, hindering value for money outcomes. In addition for this Gap to be fully addressed, it requires measures which cannot immediately be mitigated through actions in the public procurement sphere. It will require actions, guidelines and measures across government and of universal application.

- **Recommendations**

**Budget commitment controls - reducing the use of less competitive and non-competition procurement methods and more robust commitment controls:** Consider measures, such as strict application of conditions for use of less competitive and non-competitive methods, to ensure increased use of competitive bidding. This should obtain more accurate pricing for each contract, which may reduce the prevalence of contract price variations.

Prioritise implementation of more robust commitment controls, such as those that flow from operation of a suitable IFMIS when effectively integrated with the e-GP system. This should include measures to enforce and monitor compliance with existing requirements which prohibit solicitation of tenders/proposals without necessary authorization and without, or beyond, budget commitments.

**Feedback mechanism on budget execution:** Prioritise the proposed introduction of the Integrated Financial Management Information System (IFMIS) appropriately integrated with the e-GP system as this should enable an effective feedback mechanism.



Pending full roll out and integration of the IFMIS and e-GP system, put into place better mechanisms on budget execution focusing on major budget expenditure using a risk based approach.

**Processing of invoices and authorisation of payments:** To ensure clarity for potential bidders, include provisions in the legal and regulatory framework specifying consistent standard invoice payment periods. As an initial step this can be partially addressed by including consistent provisions in the new standard tender documents and contract terms. Action is, however, also required to ensure that the processing of invoices is conducted in a manner and within timescales to comply with the revised provisions in tender documents/contract terms. Consider introduction of government-wide guidance and mandated requirements for processing and payment of invoices of universal application to all procuring entities.

- **Suggestions for improvement**

The MAPS Assessment Team has identified areas for improvement which are not classified as Gaps for the purposes of the MAPS Methodology and provides the following suggestions:

**Obligation to prepare and publish an Annual Procurement Plan:** PPR to be amended to tie in with requirements of the Procurement Act to clearly state that the obligation to prepare an Annual Procurement Plan applies to all procuring entities and to tie in with relevant budget and reporting obligations for each type of procuring entity.

To increase transparency and facilitate data collection, consider: (1) additional measures to ensure that all procuring entities submit their procurement plans to the ESPPRA in accordance with statutory requirements, including consolidated annual review of compliance by all procuring entities, and; (2) including a requirement for publication of approved annual procurement plans and all amendments to procurement plans within specified timeframes (see Gap, Red flag and Recommendation at 7(a)). This could be tied in with the roll out of the e-GP system, with e-GP being the repository and source for all published approved annual procurement plans and amendments to those plans.

## Summary of substantive gaps and recommendations of Indicator 4

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
4(a)	Poor budget commitment controls	H ▶	Consider measures, such as strict application of conditions for use of less competitive and non-competitive methods and more rigorous alignment with procurement plans. Prioritise implementation of more robust commitment controls, such as those flowing from operation of a suitable IFMIS when effectively integrated with
	No effective, comprehensive feedback mechanism on budget execution	H ▶	
4(b)	Solicitation of tenders/procurement without certification of availability of funds	H ▶	



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
			the e-GP system, to include measures to enforce and monitor compliance. Pending full roll out and integration of the IFMIS and e-GP system, put into place better mechanisms on budget execution focusing on major budget expenditure using a risk based approach.
	No national level regulations for processing invoices and authorisation of payments	H ►	Include provisions in the legal and regulatory framework specifying consistent standard invoice payment periods. As an initial step this can be addressed in the new standard tender documents and contract terms.

#### 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. Depending on the institutional set-up chosen by a country, one institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-co-ordinated joint effort.

##### • Synthesis of the indicator

The legal and regulatory framework allocates most normative/regulatory functions to ESPPRA, with some elements allocated to the Technical Secretariat of the Ministry of Finance. Whilst from a legal perspective there is generally clear allocation of responsibilities, there is a lack of coherence in the operation of the procurement system and silos of practice. This is because there are, in effect, two parallel systems applying to various aspects of the conduct of procurement, with Technical Secretariat leading in respect of procurement activities of government Ministries/departments and ESPPRA leading in respect of activities of local government and Category A parastatals. Non-compliance, in particular by Ministries, with statutory reporting requirements contribute to problems with ESPPRA functioning effectively as a monitoring and oversight body and with preparation, analysis and publication of procurement related data.



- **Findings**

The legal and regulatory framework allocates most normative/regulatory functions to ESPPRA. The Procurement Act establishes the Public Procurement Regulatory Agency (now ESPPRA) to serve as an independent regulatory body with responsibility for “policy, regulation, oversight, professional development and information management and dissemination in the field of public procurement.” The Procurement Act lists the functions and powers of the ESPPRA expanding on this list of responsibilities and confirms that the ESPPRA has powers to enforce the Procurement Act and PPR. In some cases there are elements of normative/regulatory activity allocated to the Technical Secretariat of the Ministry of Finance. The ESPPRA is not directly involved in procurement operations of procuring entities, but it does undertake a number of activities which raise the possibility of internal conflicts of interest within the ESPPRA such as in conducting quality assurance, applications for deviations, compliance audit combined with policy and regulatory functions and as secretariat to the IRC. This could be addressed by putting into place a clear system or policy to identify and risk manage conflicts of interest. The ESPPRA’s internal organisational structure is appropriate for its functions but it has insufficient staff to fulfil its current responsibilities. The ESPPRA has 32 staff posts approved, with the current staff compliment standing at 15.

Whilst from a legal perspective there is generally clear allocation of responsibilities, there is a lack of coherence in the operation of the procurement system. This is because there are, in effect, two parallel systems applying to various aspects of the conduct of procurement, with Technical Secretariat leading in respect of procurement activities of government Ministries/departments and ESPPRA leading in respect of activities of local government and Category A parastatals. For example, in practice, ESPPRA issues Circulars and provides day-to-day advice support and assistance to local government and Category A parastatals on the conduct of procurement including quality/compliance review of bidding documents, subject to payment of fees, prior to publication of advertisement and supporting documents on the ESPPRA tender portal and in the national media. On occasion the ESPPRA also provides these services to Ministries. The Technical Secretariat undertakes a similar role, including issuing procurement related circulars, advising on use of standard procurement documents published by the Ministry of Finance, and quality assurance prior to tendering of documents prepared by Ministries, for which no fee is charged. There is also a commonly held perception that the PPR, or at least some parts of the PPR, are intended to apply only to central government and this is not assisted by drafting ambiguities.

Non-compliance, in particular by Ministries, with statutory reporting requirements contribute to problems with ESPPRA functioning effectively as a monitoring and oversight body and with preparation, analysis and publication of procurement related data. Some activities allocated to the Technical Secretariat under the legal framework require engagement with all procuring entities but in practice the Technical Secretariat limits its involvement (other than in its role as Secretariat to the Eswatini Government Tender Board) to central government Ministries/departments. There are provisions requiring the ESPPRA to examine and recommend ways of introducing use of ICT into procurement but there is no clear assignment of the specific function of designing and managing centralized online platforms and other e-procurement systems.

The situation described above creates silos of practice, hindering the effective functioning of both the system and the involved institutions.



- **Gaps**

**Lack of coherence due to operation of two parallel systems:** Whilst from a legal perspective there is generally clear allocation of responsibilities, there is a lack of coherence in the operation of the procurement system. This is because there are, in effect, two parallel systems applying to various aspects of the conduct of procurement, with Technical Secretariat leading in respect of procurement activities of government Ministries/departments and ESPPRA leading in respect of activities of local government and Category A parastatals. This has resulted in silos of practice and limits the overall intelligibility and effective functioning of both the system and the involved institutions.

► This Gap is assigned a Red flag because it significantly impedes the objectives of transparency, accountability, efficiency and effectiveness of the public procurement system, hindering value for money outcomes. For this complex, multi-faceted Gap to be addressed and resolved, it requires action which does not lie solely within the procurement sphere. It will involve ongoing and active cooperation between a number of stakeholders as well as Government high level decision making.

**Assignment of function for proposing changes/drafting amendments to legal and regulatory framework:** Although it may be implied, there is no clear assignment of the specific function of proposing changes/drafting amendments to the legal and regulatory framework other than in relation to ICT.

**Reference to integrity training:** There is no specific reference in the Procurement Act or PPR to delivery of integrity training programmes to support development of staff responsible for implementing procurement. This is a minor Gap.

**Assignment of function of designing and managing centralised online platforms and other e-procurement systems:** There is no clear assignment of the specific function of designing and managing centralised online platforms and other e-procurement systems.

**Standing of the ESPPRA:** The ESPPRA does not have sufficiently high level and authoritative standing to be effective as an organisation and to enable the proper exercise of its responsibilities. Of particular note is non-compliance by a significant number of procuring entities, particularly in central government, with their statutory obligations to submit information and reports, such as annual procurement plans and quarterly monitoring reports, to the ESPPRA. If these behaviours continue, they are likely to have a negative impact on the successful roll-out and ongoing operation of the e-GP system which will require input of consistent and reliable data and information by all types of procuring entities.

► This Gap is assigned a Red flag because it significantly impedes the objectives of transparency, of the public procurement system in particular. Resolution of this Gap will require pro-active and effective inter-institutional cooperation as well as Government high level decision making on issues of institutional standing.

**Financing of ESPPRA:** Significant Government financing by means of subvention casts doubt on the ability of the ESPPRA to exercise its functions as a regulator independently and, combined with annual budgeting cycle, that limits the ability to plan in the medium to long term for activities and recruitment.

► This Gap is assigned a Red flag because financial constraints leading to reduced ability of ESPPRA to properly exercise its functions significantly impedes independent regulation of the system. In addition, the issue of central government funding, budget and subvention process lies outside the procurement sphere.



**ESPPRA staffing:** The ESPPRA's internal organisational structure is appropriate for its functions but it has insufficient staff to fulfil its current responsibilities.

► This Gap is assigned a Red flag because inability of ESPPRA to properly exercise its functions, due to lack of staff, significantly impedes independent regulation of the system. In addition, the issue of central government funding, budget and subvention process which impacts on staffing lies outside the procurement sphere.

**Avoiding conflicts of interest at the ESPPRA:** The ESPPRA does not have a clear system or policies in place to identify and risk manage conflicts of interest within the ESPPRA. The ESPPRA undertakes a number of activities which raise the possibility of actual or perceived internal conflicts of interest. These may be challenging to manage due to significant levels of staff vacancies making it harder to clearly ring-fence responsibilities and activities. Activities which could raise concerns of perceived, potential or actual conflicts of interest include, for example, where the ESPPRA has been involved in quality assurance of tender documents and contracts or in approving an application for deviation and then that procurement process is subject to an ESPPRA compliance audit or is the subject matter of a complaint considered by the IRC. Even the appearance of conflict of interest can undermine confidence in the system and so policies and organisational measures need to be put in place to identify and manage potential and actual conflicts of interest.

- **Recommendations**

**Lack of coherence due to operation of two parallel systems: Institutional review**

**Combined recommendations for Indicator 5(a)(a), 5(c)(a) and 6(b)**

Conduct a critical review, drawing on local knowledge and wider expertise, to clearly map the operation of the two parallel systems applying to various aspects of the conduct of procurement resulting from the silos of practice by ESPPRA and the Technical Secretariat respectively. The review must assess the impact of those parallel activities, using a range of metrics to be agreed, on the coherence, transparency, effectiveness and efficiency of the procurement system in Eswatini.

- When looking at ways to improve the efficiency of the procurement system, it is also advisable to review the current activities of the Eswatini Government Tender Board to identify whether there is any actual or potential inter-institutional overlap or duplication of activities at any point in the procurement cycle (from planning to contract delivery and contract management). This should include consideration of reallocation of functions and activities currently undertaken by the Eswatini Government Tender Board, including to Entity Review Boards.
- It would also be appropriate for the same review to consider procurement of a centralised and specialised nature, including assessing the effectiveness of the current activities of Government Central Stores. It should also consider, for example, future requirements for consolidated procurement of common use or specialised items; solicitation and management of framework agreements; use of e-catalogues, e-market places and e-auctions; as well as management of complex procurement, which could include PPPs, and procurements requiring specialised legal or technical expertise.
- The review will need to be framed in the context of the impact of the introduction, roll-out and operation of the new end-to-end e-GP system. This will be an underlying consideration of primary importance.



The review should provide proposals for revised or new institutional and operational structure/s, functions and operational responsibility/ies which are well aligned with operation of the e-GP system and with the aim of improving transparency and effective operation of the whole public procurement system and the involved institutions. Where new or revised institutional structures are proposed, the review should also include recommendations on responsibilities, formal powers and accountabilities.

**Assignment of function for proposing changes/drafting amendments to legal and regulatory framework:** Amend the procurement legal/regulatory framework to clearly allocate responsibility for proposing change/drafting amendments to the Procurement Act and implementing regulations.

**Reference to integrity training:** In order to improve clarity, include in relevant legislation specific reference to responsibility for delivery of integrity training programmes to support development of staff responsible for implementing procurement.

**Assignment of function of designing and managing centralised online platforms and other e-procurement systems:** Include in relevant legislation clear assignment of the specific functions of designing and managing centralised online platforms and other e-procurement systems. Ideally this should be expressed to include assignment of ongoing responsibility for review of the operation of the platforms/e-procurement systems, to identify issues including required changes, improvements and additional functionalities and to carry through necessary implementation. Irrespective of where this function is assigned, it is essential that the management function and the regulatory and monitoring institution cooperate fully and access to and provision of information required by the regulator/monitor to fulfil its functions is embedded in both legislation and practice.

**Standing of the ESPPRA:** In the short term, with successful roll out of e-GP system in mind, it is essential to have coherent and clear messaging and enforcement measures to ensure that all procuring entities submit information and reports to the ESPPRA in accordance with statutory obligations and timescales. This information is important to permit the ESPPRA to properly exercise its functions. It is also of critical importance to collect meaningful and accurate national level procurement data which can be analysed and facilitate understanding of how the procurement system operates in practice and identify areas for improvement. These measures need to be prioritised to create behavioural changes which will also be key to the effectiveness of the e-GP System.

**Financing and staffing of ESPPRA:** Government to consider prioritizing funding for ESPPRA regulatory and expert functions to ensure effective operation of the public procurement system in Eswatini and to facilitate effective roll out of the e-GP system as this will be partly dependent on areas in which ESPPRA already has significant expertise.

Consider measures to increase or diversify sources of funding. This could, for example, include provision of paid-for specialised, practically focussed training and expert support for stakeholders in all sectors, including businesses.

**Avoiding conflicts of interest at the ESPPRA:** The ESPPRA should review its activities to identify the possibilities for actual or perceived conflicts of interest in its activities and in its organisational structure. It should then prepare and publish on its website a clear policy detailing how conflicts of interest will be identified and managed and how the organisational structure assists in minimizing the possibility of conflicts of interest.





## Summary of substantive gaps and recommendations of Indicator 5

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
5(a)	Lack of coherence due to operation of two parallel systems	H ▶	Critical review required, to provide proposals for revised or new institutional and operational structure/s, functions and operational responsibility/ies which are well aligned with operation of the e-GP system and with the aim of improving transparency and effective operation of the whole public procurement system and the involved institutions
5(b)	No clear assignment of the specific function of proposing changes/drafting amendments to the legal and regulatory framework other than in relation to ICT	L	Amend the procurement legal/regulatory framework to clearly allocate responsibility for proposing change/drafting amendments to the Procurement Act and implementing regulations
	No clear assignment of the specific function of designing and managing centralised online platforms and other e-procurement systems.	L	Include in relevant legislation clear assignment of the specific functions of designing and managing centralised online platforms and other e-procurement systems.
5(c)	ESPPRA has insufficient level of standing and authority	H ▶	Ensure coherent and clear messaging and enforcement measures to ensure that all procuring entities submit information and reports to the ESPPRA in accordance with statutory obligations and timescales. See also combined recommendations for critical review at 5(a)
	ESPPRA financing and annual budget cycle has negative impact on independence and ability to plan in medium to long term	H ▶	Government to consider prioritizing funding for ESPPRA regulatory and expert functions to ensure effective operation of the public procurement system in Eswatini and to facilitate effective roll out of the e-GP system. Consider also, measures to increase or diversify sources of funding.
	ESPPRA has insufficient staff to fulfil its current responsibilities	H ▶	
5(d)	The ESPPRA does not have a clear system or policies in place	H	ESPPRA to identify possible conflicts of interested in its activities and organisational structure and then





Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
	to identify and risk manage internal conflicts of interest		prepare and publish clear conflicts management policy

## 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.

### • Synthesis of the indicator

Procuring entities are clearly defined in the Procurement Act. The 91 procuring entities fall within one of three categories: Central Government, Local Government and Category A Parastatals, being enterprises which are majority Government owned or controlled. The exercise of responsibilities and competencies by procuring entities is subject to a hierarchy of decision-making set out in the Procurement Act, with the Eswatini Government Tender Board being the highest level authority. Procuring entities do not automatically have an Entity Tender Board as this is determined by an assessment conducted by the ESPPRA. Stakeholders frequently referred to the negative impact of the low threshold contract values for approval by the controlling officer or CEO of procuring entities without an Entity Tender Board.

Centralised procurement in various forms has been considered and is provided for in the legal and regulatory framework. Central Government Stores is responsible for procurement of common use items for central government but it does not have high level standing and staff skills are primarily in the sphere of inventory management. There are designated lead procuring entities (Ministries) for procurement of specialised items or categories of procurement and there is a micro-projects programme with procurement expertise provided by the Micro-Projects Unit.

### • Findings

Procuring entities are clearly defined in the Procurement Act and fall within one of three categories: Central Government, Local Government and Category A Parastatals (enterprises which are majority Government owned or controlled).<sup>43</sup> The ESPPRA's Annual Report 2020/2021 lists 91 procuring entities in total: 25 Central Government procuring entities, 13 Local Government procuring entities and 53 Category A Parastatals.

The exercise of responsibilities and competencies by procuring entities is subject to a system set out in the Procurement Act for decision making. This system establishes a hierarchy of approvals for authorised

<sup>43</sup> Public Enterprises (Control and Monitoring) Act 1989, s.2: A Category A Parastatal is a public enterprise or body which is "either wholly owned by Government or in which Government has a majority interest or which is dependent upon Government subvention or its financial support..."



decision making, using the concept of “approvals authority”. The approvals authorities are: the controlling officer or Chief Executive office where the value of the procurement does not exceed SZL 20,000 (twenty thousand) (approximately USD 1070) for goods and services and SZL 50,000 (fifty thousand) (approximately USD 2670) for works; the Entity Tender Board where the value of the procurement does not exceed the level of authority of that Entity Tender Board; the Eswatini Government Tender Board (EGTB) (or sub-committee of the EGTB) where the value exceeds the levels of authority of all lower approvals authorities. The EGTB has unlimited level of authority but has no authority over any procurement which falls within the level of authority of any subsidiary Tender Board or officer. In addition, prior approval is required from an Entity Tender Board or the Eswatini Government Tender Board, for use of single source procurement, regardless of the value of the transaction.<sup>44</sup>

Procuring entities do not automatically have an Entity Tender Board. The ESPPRA is responsible for assessing the procurement capacity and workload of each procuring entity to determine the need for an Entity Tender board and level of authority of that board. Concerns were raised about the cost, process and time involved in obtaining authorization for establishment of an Entity Tender Board, potentially limiting the number of applications. Twenty two procuring entities are authorised to establish an Entity Tender Board.<sup>45</sup> Stakeholders frequently referred to the negative impact of the low contract values for authority for approval by the controlling officer or CEO of procuring entities without an Entity Tender Board, which also results in a very heavy workload for the EGTB. Concerns were raised about the cost, process and time involved in obtaining authorization for establishment of an Entity Tender Board.

Centralised procurement in various forms has been considered and is provided for in the legal and regulatory framework. Central Government Stores are designated to procure common use items for central government, using framework contracts. For specialised items or categories of procurement there are designated lead procuring entities (Ministries). The Micro Projects Unit, a department under the Ministry of Economic Planning and Development runs tender processes, mainly for construction related activities, to support the delivery of the Micro-projects Programme at community level. The overall picture is highly fragmented.

Central Government Stores sits within Ministry of Finance “Treasury and Stores” and it has responsibility for procurement of common use items across central government. The roles and responsibilities of Central Government Stores have gradually eroded over many years. There is a residual small team whose knowledge and skills lie primarily in the sphere of inventory management rather than procurement.

- **Gaps**

**Financial thresholds for approvals authorities:** There is a clear scheme of approval authorities intended to delegate to the lowest competent level but the current financial thresholds for approval at the lowest level, by the Controlling Officer or Chief Executive are too low. This creates inefficiencies in the system as

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<sup>44</sup> In practice, according to Ministry of Finance (April 2024), prior authorisation is sought for use of limited tendering, although this is not strictly required. EGTB annual report refers to high levels of use of single source and limited tendering.

<sup>45</sup> According to data collated by the MAPS Assessment Team, there are 22 procuring entities who are authorised to establish an Entity Tender Board: 18 Category A Parastatals, 3 local government procuring entities and one central government body (HM Correctional Services). The ESPPRA also has an Entity Tender Board. Data sources: Circulars 1.2020, 2/2022, 3/2022 plus excel spreadsheets provided by ESPPRA.



currently structured as it requires low value procurement to be handled by the Eswatini Government Tender Board in many cases. The cost, process and time involved in seeking and obtaining authorization from ESPPRA for establishment of an Entity Tender Board is prohibitive in some cases.

**Government Central Stores functions and activities:** Government Central Stores is of relatively low level standing institutionally, with a limited remit. It is unlikely that the current framework arrangements for common use items are achieving best value for money outcomes, due to lack of data on which to base procurement decisions and with which to review supplier performance.

► This Gap is assigned a Red flag because the current arrangements are unlikely to be achieving the objectives of efficiency and value for money outcomes. It also requires measures which cannot immediately be mitigated through actions solely in the public procurement sphere. Current arrangements need to be reviewed at a high government level, involving more than one institution, to address both current shortfalls and also consider an alternative structure and methods to fully take advantage of the benefits which can be derived from a variety of different forms of centralized procurement and specialized procurement. This can be conducted as part of the institutional review recommended at Indicator 5.

**Knowledge and skills of Government Central Stores:** Knowledge and skills of most staff at Government Central Stores lies primarily in the sphere of inventory management and this is not consistent with wider responsibilities which include procurement. The lack of relevant knowledge and skills means that the current arrangements are unlikely to be achieving the objectives of efficiency and value for money outcome. It also requires measures which cannot immediately be mitigated through actions solely in the public procurement sphere.

- **Recommendations**

**Financial thresholds for approvals authorities:** Consider raising the thresholds for approval by the controlling officer or Chief Executive of a procuring entity, subject to proper operation of appropriate safeguards to ensure transparency and accountability.

**Government Central Stores functions and activities, knowledge and skills:** See recommendations for institutional review at Indicator 5.

### Summary of substantive gaps and recommendations of Indicator 6

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
6(a)	Financial thresholds for approvals by the controlling officer or Chief Executive are too low	M	Consider raising the thresholds, subject to proper operation of appropriate safeguards to ensure transparency and accountability
6(b)	Government Central Stores is of relatively low level standing	H ►	Combined recommendations for institutional review (see 5(a)): Critical



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
	institutionally, with a limited remit and it is unlikely that current activities are delivering best value for money		review required, to provide proposals for revised or new institutional and operational structure/s, functions and operational responsibility/ies which are well aligned with operation of the e-GP system and with the aim of improving transparency and effective operation of the whole public procurement system and the involved institutions
	Knowledge and skills of most staff at Government Central Stores are not consistent with wider responsibilities.	L	

## 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.

### • Synthesis of the indicator

Use of electronic procurement is currently limited, with on-line activity primarily focussed on advertisement of competitive procurement opportunities and notification of award. The ESPPRA website provides current information on, and links to, relevant laws, rules and regulations. It also has a tender page where procurement opportunities are advertised, but this is generally not used by central government procuring entities who advertise on the Government website tenders page, creating two parallel systems. Information available on-line on procurement opportunities is inconsistent and not easily searchable on the Government website. There is no single system in operation for reliable collection of consolidated data on procurement. Routine analysis of information, which can provide the basis for evaluation and monitoring of the operation of the system as a whole, is therefore not possible due to significant data gaps. Eswatini is moving towards adoption of a government wide end-to-end e-GP system, with roll-out planned over a four year period. The introduction and roll out of the e-GP system will require comprehensive capacity building and change management.

### • Findings

The ESPPRA website has the potential to provide a single on-line source of information on both the procurement system in general and on procurement opportunities. Use of electronic procurement is currently limited, with on-line activity primarily focussed on advertisement of competitive procurement opportunities and notification of award.



The ESPPRA website provides current information on, and links to, relevant laws, rules and regulations. The ESPPRA website also has a tender page where procurement opportunities are advertised. Information on current tender opportunities published on the ESPPRA website is searchable by category (works, supplies or services, procuring entity name, tender title and procurement method. Procuring entities using the ESPPRA website to advertise procurement opportunities publish tender documents which can be reviewed on-line.

The ESPPRA website tender page cannot, however, be classified as a centralised or integrated system. As noted under Pillar I, the ESPPRA website tender page is generally not used by central government procuring entities for advertising, and thus has only partial coverage within its already limited scope. Not all the information available from the ESPPRA website is in an open and structured machine-readable format.

Information on current tender opportunities published on the Government website tender page is not searchable and requires users to click on further links to named ministries and then look at each advertised opportunity separately. Procuring entities using the Government Tender page do not always include tender documents, sometimes only publishing the advertisement which contains information on where tender documents can be obtained. Information on procurement opportunities on the Government Website is not in a machine-readable format.

Annual procurement plans are not published, although there is a facility for this on the ESPPRA website. Appeals decisions are published promptly after the decision is made and are available on-line through the ESPPRA website.

The ESPPRA has a statutory responsibility to examine and recommend ways of introducing information and communications technology in public procurement, issuing supporting circulars and instructions, and identifying relevant additions or amendments to the public procurement legal and regulatory framework. The e-GP Strategy mandates ESPPRA to lead the e-GP initiative, with policy level support from the Ministry of Finance. There is, however, no clear assignment in the Procurement Act of the responsibility for the specific functions of managing and operating the e-GP system, when it is introduced.

There is no single system in operation for reliable collection of consolidated data on procurement of goods, works and services including consulting services and use of technological solutions is fragmented. Routine analysis of information which can provide the basis for evaluation and monitoring of operation of the system as a whole is not possible in practice, due to significant data gaps.

Eswatini is moving towards adoption of a government wide end-to-end e-GP system. In 2019, ESPPRA, with technical assistance from the World Bank, conducted an e-Government Procurement (e-GP) Readiness Assessment. The ESPPRA published the resulting e-GP Readiness Assessment Report and an e-GP Strategy, aimed at providing information on the e-GP System as well as guidance on its implementation. The e-GP Strategy for an end-to-end procurement platform was approved by Cabinet in 2021. The e-GP Strategy included an implementation plan and envisaged rollout over the period 2020 to 2023, but implementation has been delayed. At the end of 2023, the Government of Eswatini concluded negotiations with the Rwanda Corporation (a government owned company) for system development, hardware and advisory services for implementation of both an Integrated Financial Management System and an end-to-end e-Government Procurement system. Roll out is planned over a four-year period. The



introduction and roll out of the e-GP system will require comprehensive capacity building and change management.

In November 2023, the Ministry of Finance submitted a contract between Ministry of Finance and Rwanda Cooperative Initiative Ltd to Cabinet for final approval, after vetting and approval by the Office of the Attorney General but Cabinet has still not approved the contract for the implementation of the e-GP Project<sup>46</sup>.

- **Gaps**

**Public availability of information on procurement:** Comprehensive information on procurement is not available to the public or easily accessible at one location, to help interested parties to understand procurement processes and requirements or to provide a basis for social audit by stakeholders.

► This Gap is assigned a Red flag because lack of easily available relevant information severely limits both transparency and accountability of the procurement system. Resolution of this Gap will require system-wide changes, including behavioural change, involving pro-active coordinated cooperation between a large number of stakeholder institutions, such as the ESPPRA, MoF and all procuring entities, which is currently lacking. The availability of reliable data will also be closely dependent on parallel developments to substantially improve public finance management data, linked to introduction and roll out of IFMIS and thus does not lie solely in the procurement sphere.

**Integrated information system providing consolidated up-to-date information:** There is no single integrated information system providing consolidated up-to-date information.

► This Gap is assigned a Red flag because lack of easily available relevant information severely limits both transparency and accountability of the procurement system. System-wide changes, including behavioural change, with far-reaching impact on the current activities of a significant number of stakeholders, will be necessary, requiring pro-active measures by a number of institutions. The availability of up-to-date information will also be closely dependent on parallel developments to substantially improve public finance management data, linked to introduction and roll out of IFMIS and thus does not lie solely in the procurement sphere.

**Annual Procurement Plans:** There is no single integrated information system providing comprehensive, consolidated up-to-date information. Annual procurement plans are not published, information relating to specific procurements is not consistent and not available from a single source. The lack of publicly available procurement information reduces transparency and limits opportunities for social audit by interested parties.

► This Gap is assigned a Red flag because lack of easily available relevant information severely limits both transparency and accountability of the procurement system. In addition, resolution of this Gap will require pro-active inter-institutional co-operation and system-wide changes. This issue needs to be understood in the wider context of lack of publicly available data and an integrated information system and the need for parallel developments in the introduction of both e-GP and IFMIS, with the latter mitigation measure falling outside the procurement sphere.

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<sup>46</sup> <https://www.insidebiz.co.sz/ministry-of-finance-partners-with-rwandan-government-to-introduce-e-government-procurement-system/>



**Publication of documents relating to specific procurements:** Full sets of bidding documents, evaluation reports and contract documents are not consistently available on-line and, due to the operation of parallel systems, there is no single online portal, thus reducing the visibility of flow of public funds. This severely limits both transparency and accountability of the procurement system.

**Machine-readable procurement information:** In most cases, information available online is not published in an open and structured machine-readable format.

Inability to fully interrogate available information limits both transparency and accountability of the procurement system.

**Allocation of functions for managing and operating the e-GP system:** The specific functions of managing and operating the e-GP system when it is introduced is not clearly assigned. Lack of clarity on the assignment of the specific function of managing and operating the e-GP system, which requires high level Government decision making, is likely to perpetuate the silos of practice and limits the overall intelligibility and effective functioning of both the system and the involved institutions. Ultimately resulting in a lack of coherence in the operation of the procurement system.

**Capacity to plan, develop and manage e-GP system:** The e-GP system will be a new system requiring significant investment including in capacity building of Government officials to ensure that they are able to plan, develop and manage the system on an ongoing basis. It is important to ensure that a network of relevant national expertise is developed and retained, to avoid over reliance on external third-party providers in the long term.

**Skills to reliably and efficiently use e-GP system:** The e-GP system is not yet introduced and thus procurement staff are not yet in a position to be adequately skilled in the use of the system. There is a lack of sufficient qualified procurement professionals which presents a risk to the reliable and efficient use of the e-GP system.

**Supplier participation in public procurement market using digital technology:** Suppliers do not have easy access to procurement training programmes except ad-hoc workshops and seminars. They are currently not fully supported or enabled to participate in the public procurement market. There is a risk that MSME suppliers in particular may be further marginalised if insufficient time and resources are given to capacity building on the new e-GP system.

**System for collecting data on procurement:** There is no system in operation for collecting consolidated and consistent data on procurement of goods, works and services, including consulting services. There are therefore very limited possibilities for data-based evaluation of policies, operation and monitoring of the procurement system or for use of reliable data in procurement planning and market analysis.

► This Gap is assigned a Red flag because lack of a system for collecting data severely limits opportunities for analysis, to identify issues and areas for improvement in the operation of the procurement system as a whole. In addition, resolution of this Gap will require pro-active inter-institutional co-operation and system-wide changes. This issue needs to be understood in the wider context of lack of publicly available data and an integrated information system and the need for parallel developments in the introduction of both e-GP and IFMIS, with the latter mitigation measure falling outside the procurement sphere.

**Completeness of data on procurement:** Available data is incomplete, from more than one source and does not consistently cover the entire procurement process.





► This Gap is assigned a Red flag because incomplete data severely limits opportunities for analysis, to identify issues and areas for improvement in the operation of the procurement system as a whole. In addition, resolution of this Gap will require pro-active inter-institutional co-operation and system-wide changes. This issue needs to be understood in the wider context of lack of publicly available data and an integrated information system and the need for parallel developments in the introduction of both e-GP and IFMIS, with the latter mitigation measure falling outside the procurement sphere

**Reliability of data on procurement:** Available data is unreliable.

► This Gap is assigned a Red flag because lack of reliable data severely limits opportunities for analysis, to identify issues and areas for improvement in the operation of the procurement system as a whole. In addition, resolution of this Gap will require pro-active inter-institutional co-operation and system-wide changes. This issue needs to be understood in the wider context of lack of publicly available data and an integrated information system and the need for parallel developments in the introduction of both e-GP and IFMIS, with the latter mitigation measure falling outside the procurement sphere.

**Analysis of procurement information:** Routine analysis of information which can provide the basis for evaluation and monitoring of the operation of the system as a whole is not possible in practice, due to significant data gaps.

► This Gap is assigned a Red flag because it severely limits opportunities for analysis, to identify issues and areas for improvement in the operation of the procurement system as a whole. In addition, resolution of this Gap will require pro-active inter-institutional co-operation and system-wide changes. This issue needs to be understood in the wider context of lack of publicly available data and an integrated information system and the need for parallel developments in the introduction of both e-GP and IFMIS, with the latter mitigation measure falling outside the procurement sphere.

- **Recommendations**

**Public availability of information on procurement (combined recommendations):** The implementation of a new end-to-end e-GP system to be used by all procuring entities with publicly accessible data should significantly improve access to and availability of relevant information to enhance transparency and accountability of public procurement. It is envisaged that the new e-GP system is to be rolled out in phases over a period of several years. Improved transparency and accountability for the whole procurement cycle cannot wait until full roll out of the new e-GP system. It is critically important to start immediately to put into place measures to drive changes in behaviours, particularly in relation to publication at a single on-line location of information on procurement opportunities, improvements in general record keeping and reporting of procurement related information to ESPPRA.

Reliable and consistent submission of procurement information to ESPPRA significantly enhances possibilities for data-based evaluation of policies, operation and monitoring of the procurement system or for use of reliable data in procurement planning and market analysis. An improved culture of compliance on these matters will also assist in the successful roll-out of the e-GP system which will be dependent on consistent submission of good quality information and data.

Parallel developments with the introduction of IFMIS to ensure availability of comprehensive and reliable finance and budget data complementing procurement data are an integral element in delivering high quality comprehensive information on procurement.



**Integrated information system providing consolidated up-to-date information (combined recommendations):** It is important to ensure that sufficient resources, both human and financial, are in place and guaranteed for all phases of roll-out of the e-GP system so that a full end-to-end solution is delivered on time. The public interface of the e-GP system should be user-friendly and easily interrogated to provide information of relevance to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance of the system as a whole.

As a minimum, the e-GP system should include linkages to all relevant rules and regulations and provide for the publication of information listed in the MAPS methodology: annual or multi-annual procurement plans; information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement methods, contract awards and contract implementation, including amendments, payments and appeals decisions.

Ideally, all on-line Information should be published in an open and structured machine-readable format, using identifiers and classifications (open data format). Information on specific procurement should include the full set of bidding documents, evaluation reports, full contract documents including technical specifications and implementation details (in accordance with the legal and regulatory framework).

**Annual Procurement Plans:** Consider measures to enforce the obligation on procuring entities to submit procurement plans to the ESPPRA and ensure publication of all annual procurement plans on the ESPPRA website which already has a dedicated page for this purpose. As the Technical Secretariat already receives annual procurement plans from Ministries, it is recommended that, pending implementation of e-GP system (which should include publication of procurement plans), Technical Secretariat arranges to send copies of annual procurement plans it receives to ESPPRA as part of a process of increased cooperation and transparency.

**Allocation of functions of managing and operating the e-GP system:** Include in relevant legislation clear assignment of the specific function of managing and operating the e-GP system. Ideally this should be expressed to also include assignment of ongoing responsibility for review of the operation of the e-GP system, to identify issues including required changes, improvements and additional functionalities and to carry through necessary implementation.

**Capacity to plan, develop and manage e-GP system:** Prioritise capacity building of Government officials prior to and during roll-out of the e-GP system. It is important to ensure that a sufficiently wide network of relevant national expertise is developed and retained, to avoid over reliance on external third-party providers in the medium to long term.

**Skills to reliably and efficiently use e-GP system:** Ensure that capacity building of procurement staff in use of the e-GP system is implemented in a timely manner, in accordance with the e-GP strategy.

**Supplier participation in public procurement market using digital technology:** Ensure that capacity building of suppliers, including MSME suppliers, is implemented in a timely manner and on a regular and ongoing basis, in accordance with the e-GP strategy.

**System for collecting data on procurement, and Analysis of procurement information:** See combined recommendations above.

## **Summary of substantive gaps and recommendations of Indicator 7**

Please see full wording of Gaps and Recommendations above.



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
7(a)	Comprehensive information on procurement is not available to the public or easily accessible at one location	H ►	Combined recommendations Pending roll out of e-GP system, start immediately to put into place measures to drive changes in behaviours, particularly in relation to publication at a single on-line location in a consistent manner of information on procurement opportunities including bidding documents
	There is no single integrated information system providing consolidated up-to-date information.	H ►	Combined recommendations Ensure that sufficient resources, both human and financial, are in place and guaranteed for all phases of roll-out of the e-GP system so that a full end-to-end solution is delivered on time. The public interface of the e-GP system should be user-friendly and easily interrogated. Ideally, all on-line Information should be published in an open and structured machine-readable format.
	Annual procurement plans not published	H ►	Consider measures to enforce the obligation on procuring entities to submit procurement plans to the ESPPRA and ensure publication of all annual procurement plans on the ESPPRA website
	Full sets of bidding documents, evaluation reports and contract documents are not consistently available on-line and there is no single online portal	H	See combined recommendations above
	In most cases, information available online is not published in an open and structured machine-readable format.	H	See combined recommendations above
	The specific functions of managing and operating the e-GP system when it is introduced is not clearly assigned.	L	Include in relevant legislation clear assignment of the specific function of managing and operating the e-GP system.



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
7(b)	Limited capacity to plan, develop and manage e-GP system	M	Need to ensure national capacity to plan, develop and manage e-GP system to avoid long term over-reliance on external third-party providers
	Limited capacity of procurement staff in use of the e-GP system	M	Need to ensure capacity building of procurement staff in use of the e-GP system
	Limited capacity of suppliers, including MSME suppliers in use of the e-GP system	M	Need to ensure capacity building of suppliers, including MSME suppliers in use of the e-GP system
7(c)	No system in operation collecting consolidated and consistent data on procurement of goods, works and services, including consulting services	H ▶	See combined recommendations above
	Available data is incomplete and inconsistent	H ▶	See combined recommendations above
	Available data is unreliable.	H ▶	See combined recommendations above
	Routine analysis of information which can provide the basis for evaluation and monitoring of operation of the system as a whole is not possible	H ▶	See combined recommendations above

## 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. Three aspects should be considered: i) whether strategies and programmes are in place to develop the capacity of procurement staff and other key actors involved in public procurement; ii) whether procurement is recognised as a profession in the country's public service; and iii) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

### • Synthesis of the indicator

ESPPRA has a programme of annual training plans based on a training needs analysis conducted in 2021, but there is currently no training and development (capacity building) strategy in place. The ESPPRA provides both free and paid-for training on a range of procurement related matters, with 27 training events delivered in the period 2021 to 2023. The ESPPRA Capacity Building and Advisory Team receives



and provides advice to questions raised by procuring entities through e-mails, phone calls, on-line through the ESPPRA website and social media pages.

There is a mixed picture in terms of recognition of procurement as a profession, reflecting the difference in operation and governance of the three categories of procuring entities. It is notable that most Ministries do not have a specialist procurement officer, where it is common for the procurement role to be fulfilled by finance/accounting staff. There is no comprehensive procurement system performance management framework in place and the lack of both quantitative and qualitative national level data currently prevents initial steps in this direction.

- **Findings**

There is currently no training and development (capacity building) strategy in place. ESPPRA has a programme of annual training plans based on a training needs analysis conducted in 2021. ESPPRA provides training on procurement reforms, which is delivered free of charge and offered to participants from procuring entities, private sector, the media and NGO/CSO sector. From 2021 to 2023 ESPPRA delivered 12 training events on reform issues to both the public and private sectors with a total of 580 participants. ESPPRA also provides training on a commercial, paid basis. Requests for paid-for internal training delivered by ESPPRA are usually initiated by an individual procuring entity, institution or other stakeholder and is tailored to the needs of that particular organisation. ESPPRA initiates group training on a commercial paid basis, on specific issues of practical relevance and informed by the 2021 Training Needs Analysis. In the period 2021 to 2023, ESPPRA delivered 15 training events on a commercial paid basis to participants from procuring entities, private sector and NGO (1 example), including induction for new Entity Tender Boards. Topics included, regulatory framework, roles and responsibilities of evaluation committees, tender specifications, and framework contract, procurement methods, evaluation, and doing business with the public sector (jointly with the University of Eswatini). ESPPRA's Capacity Building and Advisory Team is working well below capacity, with only 3 staff members and 4 vacancies not filled. The Technical Secretariat also provides training to Ministries, when requested. There are a number of private providers who also deliver procurement related training.

The ESPPRA Capacity Building and Advisory Team receives and provides advice to questions raised by procuring entities through e-mails, phone calls, on-line through the ESPPRA website and social media pages. There is also a FAQ page on the ESPPRA website, which is due for an update. The Capacity Building and Advisory Team also provides assistance to private sector suppliers through the above media. The Technical Secretariat also provides advisory support to Ministries, on an ad-hoc basis.

There is a mixed picture in terms of recognition of procurement as a profession, reflecting the difference in operation and governance of the three categories of procuring entities. Most Ministries do not have a specialist procurement officer. It is common across government for the procurement role to be fulfilled by finance/accounting staff under delegated functions and not procurement professionals. Staff undertaking procurement roles are civil servants, with the recruitment process conducted by the Civil Service Commission. There are job descriptions with specified qualifications and competencies and there are comprehensive job descriptions for the Supply Chain Management Department within the Ministry of Finance. There are some schemes of service which articulate career progression within central government. In practice there has been a long-term staff recruitment freeze, since 2018,<sup>47</sup> which was only

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<sup>47</sup> Ministry of Public Services, Circular No.3 of 2018.



recently lifted. Some local government entities have procurement professionals directly appointed by that entity, but in the smaller local government entities the procurement role tends to be fulfilled by finance/accounting staff. It is much more common to find procurement professionals within Category A parastatals. Staff are appointed directly, with opportunities advertised and job descriptions with specified competencies. For central government procuring entities (including Ministries) the civil service staff evaluation regime applies. In local government and Category A parastatals, staff performance schemes are based on the internal rules of the organisations.

There is no comprehensive procurement system performance management framework in place and the lack of both quantitative and qualitative national level data currently prevents initial steps in this direction.

- **Gaps**

**Training strategy:** There is a comprehensive training needs analysis but currently there is no training strategy.

**Procurement as a profession in procuring entities:** Procurement is not consistently recognized as a professional function and there is a lack of procurement professionals conducting public procurement. In practice, although there are schemes of service and job descriptions with requisite qualifications and competencies specified, there are very few professional procurement officers within Ministries, and this is a factor contributing to poor procurement practice.

**Performance measurement system for procurement:** The legal framework provides for the initial steps in establishment of a performance management framework by requiring submission of data related to the conduct of individual procurement processes to the ESPPRA. Poor compliance with statutory reporting requirements means that in practice there is no performance measurement system in operation, to the detriment of both procuring entities and the system as a whole.

**Strategic plan including results framework:** There is no strategic plan, including a results framework, which are in currently in place and used to improve the system.

- **Recommendations**

**Training strategy:** ESPPRA to lead on the preparation of a training strategy for developing the capacity of key actors in public procurement including procuring entities, the private sector (including MSME businesses) and civil society. This will require active cooperation both in terms of consultation with stakeholders to ensure that specific needs to be addressed are built into the strategy and with institutional stakeholders including the Ministry of Finance, to ensure that the strategy is well integrated with other developments, not least the introduction and roll out of the e-GP system.

**Procurement as a profession in procuring entities:** ESPPRA to prioritise and provide increased leadership championing and developing procurement as a profession. ESPPRA should work with all relevant institutional stakeholders and procuring entities (all types) to ensure that procurement positions are consistently and clearly defined at different professional levels, to support the development and use of comprehensive job descriptions and to promote and develop schemes for procurement qualifications and competencies for those with procurement responsibilities at all procuring entities.



**Performance measurement system for procurement:** ESPPRA and the Ministry of Finance should work together proactively, to identify priority measures to be put into place to facilitate the introduction of a performance measurement system.<sup>48</sup> The introduction of the e-GP system provides an opportunity to improve this situation, but this is not a complete solution on its own. As highlighted in the Recommendations in Pillar 1, the introduction of the e-GP system will need to be combined with other measures and changes in practices, including in record keeping, at procuring entity level.

**Strategic plan including results frameworks:** ESPPRA to lead on the preparation of a strategic plan, to include a results framework, to structure reform initiative and to monitor the implementation of planned reforms.

### Summary of substantive gaps and recommendations of Indicator 8

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
8(a)	There is no public procurement training strategy.	M	ESPPRA to lead on the preparation of a training strategy for developing the capacity of key actors in public procurement including procuring entities, the private sector (including MSME businesses) and civil society
8(b)	Procurement is not consistently recognized as a professional function and there is a lack of procurement professionals conducting public procurement	H	ESPPRA to prioritise and provide increased leadership in developing procurement as a profession
8(c)	Poor compliance with statutory reporting requirements means that in practice there is no performance measurement system in operation	M	ESPPRA and the Ministry of Finance to work together, to identify priority measures to be put into place to facilitate the introduction of a performance measurement system
	There is no strategic plan including results framework	M	ESPPRA to lead on the preparation of a strategic plan, to include a results framework, to structure reform initiative and to monitor the implementation of planned reforms

<sup>48</sup> See OECD (2023), "Public procurement performance: A framework for measuring efficiency, compliance and strategic goals", *OECD Public Governance Policy Papers*, No. 36, OECD Publishing, Paris, <https://doi.org/10.1787/0d0e73f4-en>.





### 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.

#### 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.

**Preliminary note:** The MAPS Assessment Team encountered significant problems in obtaining necessary data from some procuring entities to be used for the selection of procurement files for the sampling process and also in accessing procurement files for analysis in some cases. Procurement files analysed were often of poor quality, fragmented, and incomplete, with information stored in multiple locations or not available at all. As recorded under Pillar I, poor record keeping is identified as a substantive Gap and assigned a Red flag. The limitations of the data gathered from the sampled procurement files mean that in some cases, the findings under Indicator 9 are based on information and data from a combination of the sampling process and other sources relied upon for the wider MAPS analysis.

- **Synthesis of the indicator**

The MAPS Assessment Team found no evidence of: needs analysis or market research; use of sustainability criteria and sustainability related contract clauses; established practice of using a prequalification phase in open tendering, or; measures to incentivise performance. There are limited records of choice of procurement methods. General observations are that the selection and award process is not carried out effectively, efficiently and in a transparent way and publishing contract award notices is not a consistent practice. Quality control and final acceptance measures were followed in 53% of cases but in a considerable part of the sample, there were no records of the execution phase of the contracts or of payments. Publication of contract amendments is not mandated and is not a standard practice. The officials in charge of managing contracts have no information on when the payments are made and the computation of interest on delayed payments is made based on the information provided by the supplier. Direct discussions with the private sector and with some procuring entities confirm that government cash flow has been poor, resulting in significant delays in payment with negative market impact.

- **Findings**

The MAPS Assessment Team found no evidence of needs analysis or market research to guide proactive identification of optimal procurement strategies. In some cases, the requirements and designed outcomes are not sufficiently clearly defined, with incomplete tender documents or poorly specified requirements. The use of sustainability criteria and sustainability related contract clauses was not detected in the sample cases.



There are provisions in the legal framework for use of multi-stage procedures for more complex procurements, but the sampled files did not show evidence of an established practice of using a prequalification phase in open tendering.

There is no single set of model procurement documents provided for use by all procuring entities. In some cases that were sampled, the procurement documents were found to be incomplete, lacking essential components such as the General Conditions of Contract (GCC), Special Conditions of Contract (SCC), or Terms and Conditions. Furthermore, crucial provisions such as those covering requests for clarification were missing, and unclear award criteria were detected.

There are limited records on choice of procurement methods. Some cases were identified where the choice of a procurement method did not follow the legal provisions. There were also cases where a Request for Deviation should have been initiated, but this was not done.

The MAPS Assessment Team found some cases where procurement documents were complete and provided the necessary guidance. In many cases, the procurement documents were not available. However, 83% of the respondents to the private sector survey find that the procedure for bid submission, receiving and opening are clearly described in the tender documents. Confidentiality is ensured throughout the process.

The sampling process identified different situations where the selection was purely based on the cost, which, combined with poor specifications/requirements and lack of sustainability criteria, is highly likely to prevent the realisation of the best value for money. In addition, 54% of the respondents to the private sector survey claim that procuring entities do not apply appropriate techniques to determine the best evaluated tender. The selection and award process is not carried out effectively, efficiently and in a transparent way. Publishing contract award notices is not a consistent practice.

The contracts reviewed do not include measures to incentivize performance, but they do contain penalties for not complying with agreed-upon service levels. The limited data from sampling indicates that many contracts are not implemented in a timely manner and some contracts were extended. The MAPS Assessment Team identified 40 sample cases (53%) where quality control and final acceptance measures are followed, but also found an unacceptably high number of cases (40%) where relevant information was not available. In a considerable part of the sample, there were no records of the execution phase of the contracts or of payments. The officials in charge of managing contracts have no information on when the payments are made and the computation of interest on delayed payments is made based on the information provided by the contractor, supplier or service provider. In addition, and despite the low level of participation in the Private Sector Survey, it should be noted that 60 per cent of respondents said they had experienced delays in payment of invoices. Direct discussions with the private sector and with some procuring entities confirmed that government cash flow has been poor, resulting in significant delays in payment with negative market impacts. No proper records of the time it takes for processing and payment of invoices exist and this is consistent with findings under Indicator 4.

The legal framework requires contract amendments to be prepared in writing and amendments are subject to prior authorisation by the Eswatini Government Tender Board or relevant approvals authority when the value is above specified thresholds. However, the MAPS Assessment Team found several cases in which contract amendments were not signed, even though there was justification for the amendments. Publication of contract amendments is not mandated and is not a standard practice.



There is no single integrated information system collecting and providing comprehensive, consolidated up-to-date data and for the purposes of producing statistics, there is no single source that covers all procurement operations in the country. There is therefore no system in place to interrogate reliable national level data, in order to measure and improve procurement practices.

The involvement of civil society throughout the procurement process is not common practice.

As mentioned in the preliminary note at the start of the presentation of this Indicator, in many cases, information on individual procurements is incomplete or unavailable. Information is not always retained by the procuring entity in a single location and in some cases, physical records are spread across several departments and/or buildings. It was common to find that there is no single, physical or electronic procurement file, covering the entire procurement cycle.

- **Gaps**

**Needs analysis and market research:** The MAPS Assessment Team found no evidence of needs analysis or market research.

Absence of these mechanisms to inform the development of optimal procurement strategies hinders the achievement of public procurement objectives.

**Requirements and outcomes of contracts:** Incomplete procurement documents are published and this prevents economic operators from knowing the contractual outcomes to which they are obliged, even if these are defined, which does not seem to be the case.

**Sustainability criteria in public procurement:** The use of sustainability criteria was not detected in the sample cases and thus value for money is not ensured where sustainability considerations are of particular relevance. Sustainability is a cross-cutting issue with wide impact.

**Multi-stage procedures:** The use of the prequalification phase in open tendering is not observed.

**Clear, standardised & integrated procurement documents:** The procurement documents used lack standardisation and are not always clear or integrated, with examples of incomplete documents identified.

**Choice of procurement methods:** There is limited evidence of correct choice and justification of procurement methods and cases were identified where legal requirements were not followed. The failure to properly document choice and reasons for use of a procurement method in compliance with the legal framework has a negative impact on achieving the objectives of transparency and accountability and achieving competition and value for money sought through public procurement.

**Procedures for bid submission, receipt and opening in the procurement documents:** In many cases the procurement documents were not available, resulting in the assignment of a minor Gap on the basis of lack of reliable data and consequent uncertainty as to day-to-day practice.

**Techniques to determine best value for money:** Appropriate techniques are not always applied to determine best value for money.

**Announcement of contract awards:** Contract awards are not always announced as prescribed.



► This Gap is assigned a Red flag because announcement of contract awards is essential to achieve procurement objectives including transparency and effective monitoring. In practice, the most reliable and effective means to ensure publication of announcement of contract awards is automatic publication through electronic means. This issue needs to be understood in the wider context of the need for roll out of both e-GP and IFMIS, appropriately integrated, with the latter mitigation measure falling outside the procurement sphere (see indicator 7).

**Sustainability in contracts clauses:** Sustainability considerations are not included in the contract clauses.

**Contractual incentive for exceeding defined performance levels:** There were no contracts identified in the sample with clauses that provide incentives for exceeding defined performance levels.

**Conduct of the selection and award process:** The data available to assess this criterion is extremely limited and the quality/integrity of the information collected in the sampling process is very low due to non-compliance with requirements on record keeping. In considering this criterion, the MAPS Assessment team has adopted a broader view based on the limited data available and applying general insights gained from the sampling process such as long time frames for procurement, perception of bidders on reasons for decisions on award, and low responsiveness for bids for goods and services plus specific findings, including failure to clearly define procurement objectives and outcome in the procurement documents (9(a)(b)). This has led the MAPS Assessment Team to conclude that this criterion is not met.

**Timely implementation of contracts:** Contracts are not always implemented in a timely manner.

**Records of contract execution phase:** There are a large number of cases where there is no record of quality control and final acceptance measures being carried out.

**Inspection and payment of invoices:** The process for authorisation of payments is disjointed, there is no comprehensive data and late payment of invoices is raised as a significant problem by the private sector and by some procuring institutions (see also analysis at 4(a)(b)).

► The Gap is assigned a Red flag because of the potential impact on the market confidence, price and competitiveness of bids, which is likely to hinder the achievement of value for money outcomes. This issue needs to be understood in the wider context of the need for roll out of both e-GP and IFMIS, appropriately integrated, with the latter mitigation measure falling outside the procurement sphere (see indicator 7) and also problems resulting from poor record keeping, as identified elsewhere in this assessment.

**Contract amendments:** There is no consistent general practice of issuing and publishing contract amendments and there are examples of contract amendments not being signed even where amendments were justified.

**Procurement statistics:** There is no single source of traceable and reliable data.

► This Gap is assigned a Red flag because the absence of a single source of traceable and reliable data prevents procurement monitoring and improvement and, therefore, the achievement of procurement objectives. Mitigating this Gap will be hindered, in particular, by the lack of integrated information systems (e-GP and IFMIS), with implementation of IFMIS lying outside procurement sphere, and poor record keeping, as identified elsewhere in this assessment.



**Involvement of external stakeholders in public procurement:** 84% of the contracts analysed did not involve civil society at any stage.

**Accuracy of procurement records:** In 85% of the sample cases the records were not complete and in many cases, information was not available from a single sources.

► This Gap is assigned a Red flag because incomplete records, aggravated by the absence of single, physical or electronic procurement file makes it impossible to have full knowledge of the procurement and, as such, to achieve the objectives sought by the procurement. Mitigating this Gap will be hindered, in particular, by poor record keeping and the lack of integrated information systems (e-GP and IFMIS), with implementation of IFMIS lying outside procurement sphere, as identified elsewhere in this assessment.

- **Recommendations**

**Note:** Where reference is made to improved record keeping, the general recommendations on Record Keeping under Indicator 1 also apply.

**Needs analysis and market research:** Procuring Entities should conduct needs analysis and market research which, combined with policy documents and well-defined procurement strategies, should enable the preparation of annual operational plans capable of informing the different stakeholders and thereby achieving public procurement objectives. ESPPRA should promote the training of procuring entities in relation to methods for conducting, and recording the conduct of, relevant, tailored and effective needs analysis and market research. ESPPRA should prioritise publication of the standard tender document, documents to facilitate the market consultation process. In order to mitigate this Gap, inter-institutional cooperation will also be required to ensure that all procuring entities receive the same training and adopt consistent approaches.

**Requirements and outcomes of contracts:** Procuring Entities must ensure a clear definition of their requirements and desired outcomes. They must also ensure that the tender documents include all the essential elements for a good understanding of all the contractual obligations.

An effective step to facilitate the objective of ensuring clarity and understanding of requirements, desired outcomes and contractual obligations, is to prioritize the finalization and adoption of (1) a set of standard bidding and contract documents; and (2) standard contract conditions; and mandate their use by all procuring entities (Central government, local government and category A parastatals) as recommended under Indicator 2.

**Sustainability criteria in public procurement:** Procuring entities should include sustainability criteria in both their specified requirements and criteria for evaluation of tenders, as appropriate, to ensure value for money. There are various measures and practices which may be introduced in the short term, pending development and implementation of a sustainable public procurement (SPP) policy/strategy.

In the longer term, provisions for and use of sustainability criteria needs to tie in with the development and implementation of a sustainable public procurement (SPP) policy/strategy aligned with national priorities, related amendment to the legal/regulatory framework and embedding of sustainability in model procurement documents (standard tender documents), contract conditions and practice. An SPP policy/strategy does not currently exist and developing it will require inter-institutional cooperation. See full Recommendations on SPP at Indicator 3.



**Contractual incentive for exceeding defined performance levels:** Contract clauses should be included in standard contract conditions, that promote positive performance and discourage negative performance, for use when appropriate.

**Conduct of the selection and award process:** Improved record keeping is essential in demonstrating that the selection and award process is carried out in an effective, efficient and transparent way. The recommendations at 1(k) apply.

**Multi-stage procedures:** Procuring entities should consider using a pre-qualification phase for complex procurements. The choice of this possibility should be made in line with the needs analysis and market studies recommended above.

**Clear, standardised & integrated procurement documents:** All procuring entities should ensure that they prepare and use clear and integrated procurement documents.

An effective step to facilitate the objective of ensuring clarity and understanding of requirements, desired outcomes and contractual obligations, is to prioritize the finalization and adoption of: (1) a set of standard bidding and contract documents; and (2) standard contract conditions; and mandate their use by all procuring entities (Central government, local government and category A parastatals) as recommended under Indicator 2.

**Choice of procurement methods:** Compliance verification mechanisms should be strengthened to ensure that the choice of procurement method is clearly documented in every case and complies with the legislation.

**Procedures for bid submission, receipt and opening in the procurement documents:** Procurement documents must be kept and maintained as prescribed in the legal and regulatory framework. This will ensure that there is transparency of process and clear evidence that procedures for bid submission, receipt and opening are described, including information on who is permitted to attend bid openings. This recommendation ties in with Recommendations on Record Keeping at Indicator 1 and Engagement of Civil Society at Indicator 13.

**Techniques to determine best value for money:** Introduce measures to ensure that appropriate techniques for a particular procurement are selected and applied to determine best value for money. This requires a combination of activities implementing recommendations identified elsewhere in this assessment, in particular: use of market research above; finalisation and adoption of standard bidding and contract documents and standard contract conditions mandated for use by all procuring entities at Indicator 2, and; preparation of a practical user manual and training in particular on preparation of tender documents and evaluation to support implementation also at Indicator 2.

**Announcement of contract awards:** To promote transparency and effective procurement monitoring, put into place measures that mandate and enforce the publication of announcement of contract awards in a single national location.

**Sustainability in contracts clauses:** Include sustainability related contract clauses in standard contract terms, with supporting guidance for use.



**Contractual incentive for exceeding defined performance levels:** Contract clauses should be included in standard contract conditions, that promote positive performance and discourage negative performance, for use when appropriate.

**Conduct of the selection and award process:** Improved record keeping is essential in demonstrating that the selection and award process is carried out in an effective, efficient and transparent way.

**Timely implementation of contracts:** Records must be kept of the contracts and effective monitoring of their execution must be carried out. Addenda to contracts must be signed whenever changes occur (cost and time overruns and other deviations).

**Records of contract execution phase:** Records must be kept of the entire contract execution phase. The application of quality control and final acceptance measures should be monitored.

**Inspection and payment of invoices:** Payment deadlines for invoices issued by suppliers to procuring entities must be maintained and monitored. The planned implementation of the IFMIS may contribute to addressing these gaps.

**Contract amendments:** Review the current provisions and processes for contract amendments to ensure fitness for purpose and consider measures to ensure better compliance with existing requirements and record keeping to facilitate monitoring. Ensure that the e-GP system function for notification and publication of contract amendments is prioritized for roll-out.

**Procurement statistics:** The systems for collection of data should be revised to ensure traceability and increased reliability of data. See also recommendations at Indicator 7

**Involvement of external stakeholders in public procurement:** A culture of civil society participation must be created, as this contributes to the achievement of procurement objectives. See recommendations at Indicator 11.

**Accuracy of procurement records:** Introduce measures to ensure that the procurement records to be retained in accordance with the legislative framework are kept in a single, physical or electronic procurement file. The introduction of e-GP system should go some way to assist but pending roll out of all functionalities of an end-to-end e-GP system, measures to improve record keeping (paper based and electronic) must be prioritised.

## Summary of substantive gaps and recommendations of Indicator 9

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
9(a)	No evidence of needs analysis or market research.	H	Procuring Entities should conduct needs analysis and market research and ESPPRA should promote the training and





Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
			capacity building of procuring entities in relation to methods for conducting and assessing needs analysis and market research
	Incomplete procurement documents are published	H	Procuring Entities to clearly define their requirements and desired outcomes. They must also ensure that the tender documents include all the essential elements for a good understanding of all the contractual obligations. To assist procuring entities, ESPPRA finalise and publish standard tender documents and contract conditions for mandatory use by all procuring entities
	No use of sustainability criteria	H	Include sustainability criteria in both specified requirements and criteria for evaluation of tenders, as appropriate, to ensure value for money
9(b)	The use of the prequalification phase in open tendering is not a standard practice.	M	Procuring entities should consider using a pre-qualification phase for complex procurements The choice of this possibility should be made in line with the needs analysis and market studies recommended in 9(a)(a)
	Procurement documents lack standardisation and are not always clear or integrated, with examples of incomplete documents	H	Procuring entities to prepare and use clear and integrated procurement documents To assist procuring entities, ESPPRA finalise and publish standard tender documents and contract conditions for mandatory use by all procuring entities
	There is limited evidence of correct choice and justification of procurement methods	H	Compliance verification mechanisms should be strengthened to ensure that the choice of procurement method is clearly documented in every case and complies with the legislation
	Appropriate techniques are not always applied to determine best value for money	H	Introduce measures to ensure that appropriate techniques for a particular procurement are selected and applied to determine best value for money.
	Contract awards are not always announced as prescribed	H ►	The publication of contract awards in a single national location is recommended



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
			for transparency and to allow for effective procurement monitoring
	Sustainability considerations are not included in the contract clauses	M	Include sustainability related contract clauses in standard contract terms, with supporting guidance for use
	Contractual incentive for exceeding defined performance levels not identified	M	Include contractual provisions to incentivise exceeding defined performance levels
	Data available to assess conduct of selection and award process is extremely limited	H	Improved record keeping is essential in demonstrating that the selection and award process is carried out in an effective, efficient and transparent way.
9(c)	Contracts are not always implemented in a timely manner	H	Records must be kept of the contracts and effective monitoring of their execution must be carried out. Addenda to contracts must be signed whenever changes occur
	There are a large number of cases where there is no record of quality control and final acceptance measures being carried out	H	Records must be kept of the entire contract execution phase. The application of quality control and final acceptance measures should be monitored
	The process for authorisation of payments is disjointed, there is no comprehensive data	H ▶	Payment deadlines for invoices issued by suppliers to procuring entities must be maintained and monitored. The planned implementation of the IFMIS may contribute to addressing these gaps
	There is no consistent general practice of issuing and publishing contract amendments	H	Review the current provisions and processes for contract amendments to ensure fitness for purpose and consider measures to ensure better compliance
	There is no single source of traceable and reliable data to provide procurement statistics.	H ▶	The system for collection of data should be revised to enable its traceability and increase its reliability
	Opportunities for direct involvement of external stakeholders in the conduct of procurement are limited	L	A culture of civil society participation must be created, as this contributes to the achievement of procurement objectives
	Procurement records are incomplete or not available	H ▶	Introduce measures to ensure that the procurement records to be retained in accordance with the legislative



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
			framework are kept in a single, physical or electronic procurement file. The introduction of e-GP system should go some way to assist but interim measures must be prioritised

## 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. This indicator also considers dialogue and partnerships between public and private sectors.

### • Synthesis of the indicator

There are established mechanisms for consultation when formulating legislative changes and most stakeholders confirmed that they have been consulted on proposed changes to the public procurement legislation. In a few cases, stakeholders commented that they had not been engaged or fully engaged and it appears that the list of stakeholders to be consulted may not always be comprehensive and so could be improved for future consultations.

The organisational and technical capacity of micro, small and medium enterprises in particular is limited, hindering their abilities to participate in an active manner in the public procurement market. There is no comprehensive government programme to help build capacity among the private sector. There has been no systematic assessment by the government of risks associated with key sectors related to the procurement market or comprehensive direct engagement with sector market participants in support of procurement policy objectives.

### • Findings

There are established mechanisms for consultation when formulating changes to the public procurement system. The Office of the Attorney-General has developed guidance for Ministries on how to consult stakeholders and assists with guidance on the production of templates and development of questions for consultation on new or amended primary legislation as well as methods for fast tracking consultation. Changes to primary legislation involve the publication of the proposals for formal public scrutiny. In the case of changes to the procurement system, the feedback received from most stakeholders was that they had been consulted on proposed changes. In the case of the introduction of the PPR, ESPRA played a lead role in facilitating discussions. In a few cases, stakeholders commented that they had not been engaged or fully engaged. The list of stakeholders to be consulted may not always be comprehensive, so it could be improved for future consultations.



The organisational and technical capacity of micro, small and micro enterprises (MSMEs) is limited, hindering their abilities to actively participate in the public procurement market. MSME businesses make up a significant proportion of businesses in Eswatini. There is no comprehensive government programme to help build capacity among private companies, including small and micro businesses to help new entries into the public procurement marketplace.

Smaller suppliers flagged issues with the complexity of documents and processes, as well as access to financing as negative impacts on their ability to compete in the public procurement market. A particular problem faced by all suppliers, regardless of their size, is significant delays in payment of invoices exacerbated by recent national cash flow issues. This has had a knock-on effect for example in relation to liability to pay VAT prior to receipt of full payment.

There has been no systematic assessment by the government of risks associated with key sectors related to the procurement market or comprehensive direct engagement with sector market participants in support of procurement policy objectives.

- **Gaps**

**Capacity building for the private sector:** The ESPPRA does provide some training for the private sector, but there is no comprehensive government programme to help build capacity among private companies, including small and micro businesses to help new entries into the public procurement marketplace.

**Capacity of MSME businesses:** MSME businesses, which make up a significant proportion of businesses in Eswatini, have limited organisational and technical capacity, hindering their ability to actively participate in the public procurement market.

**Systemic constraints inhibiting private sector access to the public procurement market:** Private sector identify a number of constraints in accessing public markets. Most prominently in the survey, more than 90 per cent of respondents indicate that access to financing is not easy. A particular problem faced by all suppliers, regardless of their size, is significant delays in payment of invoices exacerbated by recent national cash flow issues. Use of procurement processes disproportionate to the risk and value of the contract was also flagged.

► This Gap is assigned a Red flag because systemic constraints identified can significantly reduce competition with a negative impact on value for money outcomes. In addition, remedial action in respect of financing and cash flow issues lies beyond the sphere of public procurement.

**Identification of key sectors associated with the public procurement market:** There has been no systematic identification by government of key sectors.

► This Gap is assigned a Red flag because identification of key sectors is critical for the development of a comprehensive public procurement strategy and to address sector specific goals and issues. Failure to do so limits comprehensive understanding of the particularities of sectors and markets, for example the health and IT sectors, and prevents the achievement of procurement objectives including promotion of effective competition and value for money outcomes. In order to ensure full and effective engagement, high level Government leadership and action is required, which lies beyond the procurement sphere.

**Sectoral risk assessment by government:** There is no formalized standard process for regular sectoral risk assessment by government and engagement of market participants in support of procurement policy objectives.



► This Gap is assigned a Red flag because failure by government to assess sector market risks and engage with market participants hinders achievement of procurement objectives including ensuring effective competition and delivery of appropriate outcomes with understanding and allocation of risk where it is best placed to be managed. In order to ensure full and effective engagement, high level Government leadership and action is required, and such action lies beyond the procurement sphere.

- **Recommendations**

**Capacity building for the private sector:** Develop and deliver regular information and training programmes to help build capacity of the private sector. These programmes should be free of charge and tailored to the needs of the private sector players who are engaged with, in particular smaller businesses whose participation in public procurement can help improve supplier diversity and promote local economic activity. The information and training should include modules on ethics and integrity in public procurement. These information and training programmes should be aligned with and/or be part of the activities associated with roll out of the e-GP system.

**Capacity of MSME businesses:** Implement measures to support practical skills based capacity building to increase organizational and technical capacity of suppliers, in particular MSMEs, to participate in the public procurement market.

**Systemic constraints inhibiting private sector access to the public procurement market:** Consider undertaking a critical study to fully identify and assess systemic constraints inhibiting private sector access to the procurement market with the aim of identifying practical solutions to increase participation and effectiveness of participation.

**Identification of key sectors, risks and opportunities associated with the public procurement market:** Government to undertake robust market analysis to identify key sectors based on the government's priority spending areas. The analysis should help to determine sector related risks, including in terms of expenditure, competition, environmental impact and socio-economic factors. It should also assist to identify the government's scope to influence specific market segments, in an appropriate, equitable, open and transparent manner, and to secure meaningful engagement with market participants to achieve aims such as strengthening integrity, sustainability and innovation in public procurement.

- **Suggestions for improvement**

The MAPS Assessment Team has identified areas for improvement which are not classified as Gaps for the purposes of the MAPS Methodology and provides the following suggestions:

**Identification of, and consultation with, stakeholders:** Ensure wide and meaningful engagement with stakeholders in future consultations on changes to the procurement legal framework, including changes to the PPR or introduction of new regulations. Care needs to be taken to draw up the list of stakeholders to be consulted, to include procuring entities, representatives from business (MSMEs as well as larger businesses) and also civil society.

### **Summary of substantive gaps and recommendations of Indicator 10**

Please see full wording of Gaps and Recommendations above.



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
10(a)	There is no comprehensive government programme to help build capacity among private companies including MSME businesses	M	Implement measures to support practical skills based capacity building to increase organizational and technical capacity of suppliers, in particular MSMEs, to participate in the public procurement market
10(b)	Private sector identified a number of constraints in accessing public markets	H ▶	Undertake a critical study to fully identify and assess systemic constraints inhibiting private sector access to the procurement market with the aim of identifying practical solutions to increase participation and effectiveness of participation
10(c)	There has been no systematic identification by government of key sectors	H ▶	Government to undertake robust market analysis to identify key sectors based on the government's priority spending areas to determine sector related risks and assist to identify the government's scope to influence specific market segments, in an appropriate, equitable, open and transparent manner, and to secure meaningful engagement with market participants to achieve aims such as strengthening integrity, sustainability and innovation in public procurement
	There is no formalized standard process for regular sectoral risk assessment by government and engagement of market participants in support of procurement policy objectives	H ▶	

### 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 assesses aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.



## 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.

- **Synthesis of the indicator**

Laws, regulations and policies, as well as decisions of the IRC, are published and easily accessible to the public from the ESPPRA website. However, information available to stakeholders, including civil society organisations, in relation to specific procurements is inconsistent and not accessible from a single data source. Available information is not all in an open and structured machine-readable format. The legal and regulatory framework does not specifically provide for citizen participation in planning, evaluation, contract award or completion. Capacity building for civil society is limited.

- **Findings**

Laws, regulations and policies, as well as decisions of the IRC, are published and easily accessible to the public from the ESPPRA website. However, information available to stakeholders in relation to specific procurement opportunities, the conduct of procurement processes, contract award and contract delivery, is either unavailable or, when available is piecemeal, inconsistent and not accessible from a single data source. Available information is not all in an open and structured machine-readable format. The legal and regulatory framework does not specifically provide for citizen participation in planning, evaluation or contract award, thus restricting opportunities for consultation, observation and monitoring.

There are established mechanisms for consultation when formulating changes to the public procurement system. There is a mixed picture in terms of the level, nature and extent of consultation with civil society on formulation of the Public Procurement Regulations, with some representatives flagging their non-involvement and a lack of evidence to demonstrate that the government takes on board comments and feedback from civil society. The issue of better, more comprehensive engagement with civil society has been addressed under Indicator 10.

The ESPPRA delivers training programmes, to build the capacity of procuring entities and business. Due to limited resources, the focus of training is primarily on procuring entities and business. Participation by civil society in current training is limited and there is no specific training programme in place to build the capacity of civil society to understand, monitor and improve public procurement.

- **Gaps**

**Programmes to build capacity of civil society:** ESPPRA delivers training programmes to build capacity and with its very limited resources, its focus is on procuring entities and business. There is no comprehensive programme in place to build the capacity of civil society to understand, monitor and improve public procurement and to act as a safeguard against inefficient and ineffective use of public resources.





► This Gap is assigned a Red flag because it significantly impedes the objectives of improving accountability and improving effectiveness and efficiency of the procurement system through meaningful civil society engagement. In order to be fully effective, it requires inter-institutional cooperation and allocation of resources which goes beyond the sole remit of ESPRA and lies outside the procurement sphere.

**Active engagement of civil society by government:** There is insufficient evidence to conclude that civil society is actively engaged to facilitate the monitoring of public procurement.

► This Gap is assigned a Red flag because it significantly impedes the objectives of improving accountability and improving effectiveness and efficiency of the procurement system through meaningful civil society engagement. In order to be fully effective, it requires inter-institutional cooperation and allocation of resources and policy decisions which go beyond the sole remit of the ESPRA and lies outside the procurement sphere.

**Access to information for effective participation:** The overall picture is one of inadequate disclosure of information to the public in relation to specific procurements across the procurement lifecycle, from planning through to contract delivery. Available information is limited and fragmented, hindering the possibilities for effective public participation to support the integrity of public procurement, including the visibility of flow of public funds.

► This Gap is assigned a Red flag because lack of provision for access to information on procurement by the public significantly hinders and impedes the objectives of improving transparency, accountability, effectiveness and efficiency of the procurement system. In addition, system-wide changes involving pro-active cross-governmental cooperation between a large number of stakeholder institutions and with far-reaching impact on the current activities of a significant number of stakeholders, will be necessary. This will require coordinated, pro-active measures, not lying solely within the procurement sphere.

**Promoting citizen participation:** The legal and regulatory framework lacks provisions which positively promote participation of citizens in procurement processes through consultation, observation and monitoring which reduces transparency and accountability, in particular.

**Evidence of direct citizen participation:** There is insufficient evidence to conclude that citizens are actively engaged in procurement processes through consultation, observation or monitoring.

► This Gap is assigned a Red flag because insufficient active public engagement significantly hinders transparency and impedes the objectives of improving accountability, effectiveness and efficiency of the procurement system. Mitigation measures to facilitate direct citizen participation and create an environment where relevant evidence is available will require cross governmental, inter-institutional co-operation, to support this type of engagement and start to build improved levels of citizen trust in the procurement system and this lies beyond the procurement sphere.

- **Recommendations**

**Programmes to build capacity of and active engagement with civil society:** The Government must provide resources and expertise to ensure that relevant authorities are able to prepare and deliver a comprehensive and ongoing training programme. This should start as soon as possible, to build the



capacity of civil society to understand the public procurement regime, both the legal framework and operation in practice, to facilitate the role of civil society in monitoring public procurement activity.

This must include provision of information and practical understanding of the implementation and roll out of the e-GP system and guidance on what information is available on-line, how it is accessed and how it can be analysed.

This increased capacity building through engagement with civil society should be supported by introduction of a simple system to ensure that input, comments and feedback is sought from civil society on a regular basis and no less than once a year. To increase accountability and transparency, the Government should consider input received from civil society, publish its reasoned responses promptly together with an action plan with timelines for implementation.

**Access to information for effective participation:** A combination of measures is required to ensure that the procurement system in Eswatini provides adequate disclosure to ensure that stakeholders have meaningful understanding for effective participation in the system to enhance both integrity and competition. Specific recommendations are set out in this assessment but include: ensuring publication of procurement opportunities and contract awards in a single location – this could be remedied in the short term by use of the existing ESPRA website, pending roll-out of the e-GP system; publication and mandatory use of the same suite of standard tender and contract documents by all procuring entities, and; collection and publication of reliable national data on procurement activities.

**Promoting direct citizen participation:** Amend the legal/regulatory and policy framework to include provisions to allow citizens to participate in phases of the procurement process in order to encourage citizen involvement and enhance competition, transparency and accountability, in particular. A variety of measures may be considered. In order to ensure that the measures are appropriate, can be implemented in practice and are of true value, citizens/civil society must be fully engaged in meaningful consultation on proposed measures.

### Summary of substantive gaps and recommendations of Indicator 11

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
11(a)	There is no comprehensive programme in place to build the capacity of civil society to understand, monitor and improve public procurement and to act as a safeguard against inefficient and ineffective use of public resources	H ▶	Prepare and deliver a comprehensive and ongoing training programme to build the capacity of civil society to understand the public procurement regime, practice and the e-GP system, to facilitate the role of civil society in monitoring public procurement activity
	Civil society is not actively engaged by government to	H ▶	



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
	facilitate the monitoring of public procurement		
11(b)	There is inadequate disclosure of information to the public in relation to specific procurements across the procurement lifecycle. Available information is limited and fragmented	H ►	A combination of measures is required to ensure that the procurement system in Eswatini provides adequate disclosure to ensure that stakeholders have meaningful understanding for effective participation in the system to enhance both integrity and competition, include: ensuring publication of procurement opportunities and contract awards in a single location; publication and mandatory use of the same suite of standard tender and contract documents by all procuring entities, and; collection and publication of reliable national data on procurement activities
11(c)	The legal and regulatory framework lacks provisions which positively promote participation of citizens in procurement processes	H	Amend the legal/regulatory and policy framework to include provisions to allow citizens to participate in phases of the procurement process in order to encourage citizen involvement and enhance competition, transparency and accountability, in particular
	Citizens are not actively engaged in procurement processes through consultation, observation or monitoring	H ►	

## 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.

- **Synthesis of the indicator**



Laws and regulations provide for the establishment of a comprehensive control framework including internal controls and internal audit function, external audit conducted by the Office of the Auditor General or other external auditors in the case of Category A parastatals. PFMA provides for the establishment and operation of the Audit Committee (internal audit), an important part of the audit system which is in the course of being established.

The Internal Audit Office carries out audits in accordance with an annual procurement plan and all internal auditors receive training on public procurement. Procuring entities do not always have standard operating procedures in place and internal controls are weak. The Office of the Auditor General (OAG) is the supreme audit institution. The Office of the Auditor General is not sufficiently independent of the executive and is significantly under-resourced. As well as carrying out and publishing independent external financial audits, the OAG has conducted risk-based compliance audits including assessment of the procurement function within selected procuring entities. There is a poor level of compliance with implementation of both internal and external audit recommendations.

Reporting lines between relevant oversight bodies are not sufficiently clear or reliable. On a positive note, a draft Combined Assurance Framework has recently been re-established, involving the Office of the Auditor General, Internal Audit Office, Accountant General, ESPPRA, ACC and REPS. Aims of this framework include coordinated and more focused assurance efforts.

- **Findings**

Laws and regulations provide for the establishment of a comprehensive control framework including internal controls and internal audit function, external audit conducted by the Office of the Auditor General or other external auditors in the case of Category A parastatals.

Section 207 of the Constitution establishes the independent public Office of the Auditor General (OAG), to audit and report on public accounts of Eswatini and all offices, courts and authorities of the Government. Section 209 of the Constitution establishes the Finance Committee and the Parliamentary Public Accounts Committee (PAC). The PAC has a constitutional duty to examine and report to the House on accounts of the Government.

The main legislation governing the control and audit framework is the Audit Act 2005, the Public Finance Management Act 2017 (PFMA) and the Public Enterprises (Control and Monitoring) Act 1989. The Office of the Auditor General (OAG) and Internal Audit Office (IAO) play a significant role in the control system. The Internal Audit Office provides internal audit services to central government including Ministries. Local government and Category A parastatal procuring entities can appoint their own internal auditors and external auditors and must comply with requirements for publication of annual accounts and external audit reports. The Auditor General is entitled to receive all audit reports. In addition, the ESPPRA conducts specialised procurement audits pursuant to its oversight functions in the Procurement Act.

PFMA provides for the establishment and operation of the Audit Committee (internal audit), which is an important part of the audit system. The Audit Committee is still in the course of being established. Local government and Category A parastatal procuring entities can appoint their own internal auditors and external auditors and must comply with requirements for publication of annual accounts and external audit reports.



The internal control/audit mechanisms and systems do not function in a manner to ensure appropriate oversight of procurement. Procuring entities do not always have standard operating procedures in place and the information available when internal audits are conducted is not consistent. Weak internal controls are consistently referred to in reports published by the Auditor General and this was identified as an area of concern in the CIFA 2010 Report, with an overall low score of D\* for effectiveness of internal controls for non-salary expenditure. The situation does not appear to have improved. The National Development Plan 2023/24-2027/2028 identifies weakened budget coordination among “Fiscal Management Key Challenges”, commenting that “As the fiscal crisis deepens, the fragmentation [of national budgeting co-ordination] has resulted in a poorly coordinated budget, deteriorating procurement processes, diminishing expenditure commitments and controls, as well as financial management.” The MAPS Assessment findings are consistent, noting that the budgetary and management systems are fragmented and functioning mechanisms for reporting on budget execution are limited. The invoice portal for the Office of the Accountant General is not linked to the payment system, so reliable data on invoicing and payment is not available. Solicitation of some tenders/proposals takes place without necessary authorization and without or beyond budget commitments. There are no national regulations or measures in place, of universal application to all procuring entities, for processing and authorization of invoices and payments. Payment provisions are currently provided for in individual contract documents and provisions are inconsistent. In practice, cash flow and thus prompt payment of invoices is a chronic problem.

As noted under Indicator 7, at the end of 2023, the Government of Eswatini concluded negotiations with the Rwanda Corporation (a government owned company) for system development, hardware and advisory services for implementation of both an Integrated Financial Management System (IFMIS) and an end-to-end e-Government Procurement system. Adoption of the IFMIS, appropriately aligned with the e-GP system and supported by relevant and comprehensive capacity building, should improve aspects of fiscal management relating to procurement and facilitate processing and timely payment of invoices in a consistent manner.

The Office of the Auditor General is the supreme audit institution. The Office of the Auditor General is not sufficiently independent of the executive and is significantly under-resourced. As well as carrying out and publishing independent external financial audits, the OAG has conducted risk-based compliance audits including assessment of the procurement function within selected procuring entities. There is a mechanism for review at Parliamentary level of audit reports provided by the Auditor General and for determination of appropriate actions and implementation. In practice, however, the mechanism is limited in its effectiveness as there is systemic weakness in respect of implementation. In practice the Auditor General has, in many cases, needed to push the PAC to take action and the Auditor General continues to raise concerns that the Executive does not implement recommendations.<sup>49</sup> There are well delineated mechanisms to follow-up on audit findings but, again, in practice there is a poor level of compliance with implementation of both internal and external audit recommendations, with a recent and notable decline in levels of compliance with internal audit recommendations.

There is a template for standard operating procedures for internal financial controls and a Financial Management and Accounting Procedures Manual, but the standard operating procedures are not always

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<sup>49</sup> Information provided by Office of the Auditor General to MAPS Assessment team, October 2023 and to AfDB PFM specialist team in March 2024.



in place and the Manual is very out of date. There are written standards and procedures for conducting compliance and performance audits by internal and external auditors. These more general standards are applied to conduct of procurement audit. The ESPPRA conducts value for money and compliance audits of procurement by procuring entities, in accordance with written procedures.

The Internal Audit Office carries out audits in accordance with an annual procurement plan. The Auditor General publishes an annual report on external audits carried out which is available to download from the website of the Office of the Auditor General. The Auditor General conducts annual financial audits applying international audit standards.

There are insufficiently clear and reliable reporting lines between relevant oversight bodies. In practice, the Auditor General refers matters of suspected corruption to the Anti-Corruption Commission. The Auditor General also liaises, where appropriate, with the fraud unit of the Royal Eswatini Police Service. The Auditor General is in discussion with ESPPRA to conclude a Memorandum of Understanding to enhance cooperation. A draft Combined Assurance Framework has recently been re-established but not finalised, involving the Office of the Auditor General, Internal Audit Office, Accountant General, ESPPRA, ACC and REPS. Aims of this framework include coordinated and more focused assurance efforts.

There is training in place to ensure that auditors working on procurement audits are adequate to the task. Auditors at the Office of the Auditor General undertake the AFROSAI (African Organisation of Supreme Audit Institutions) external auditors course, delivered in a hybrid manner. In addition, they receive training on: contract and procurement audit<sup>50</sup> and procurement fraud audits and procurement investigations.<sup>51</sup> 12 auditors have received this specialist training (26%). The Internal Audit Office conducts its own in-house training on public procurement and all auditors have received this training. Auditors are selected according to relevant experience and training of relevance to the conduct of procurement audits. Both internal audit and OAG external audit posts are publicly advertised in the media with appointment following Civil Service Commission procedures.

- **Gaps**

**Comprehensive control framework - Internal control/audit mechanisms:** : There are internal control/audit mechanisms and systems but they do not function in a manner to ensure appropriate oversight of procurement. Procuring entities do not always have standard operating procedures in place and the information available when internal audits are conducted is not consistent. The Audit Committee provided for in the PFMA and which should strengthen controls, has not yet been established.

► This Gap is assigned a Red flag because poor functioning of internal control/audit and a non-existent Audit Committee significantly hinders appropriate oversight of procurement, increasing the risk that procurements will fail to meet objectives including efficiency and value for money outcomes. In addition, it requires actions to improve internal control/audit mechanisms which may require significant changes in practice by procuring entities and action lying outside the procurement sphere such as establishment of the Audit Committee provided for in PFMA.

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<sup>50</sup> 17 auditors have received this specialist training (36% of total number of external auditors in the OAG)

<sup>51</sup> 12 auditors have received this specialist training (26% of total number of external auditors in the OAG).



**Internal audit and control mechanisms to ensure appropriate oversight:** Internal controls at procuring entity level are weak in practice. Some of the instructions, regulations and manuals setting out control mechanisms and measures to be applied by procuring entities are outdated and need to be replaced or updated.

► This Gap is assigned a Red flag because it requires significant levels of inter-institutional cooperation including, procurement, audit and finance, to tackle a systemic issue which significantly impedes overall operation of the procurement system to ensure efficiency, effectiveness and value for money.

**Internal control mechanisms to ensure balance between timely and efficient decision-making and adequate risk mitigation:** The internal control/audit mechanisms and systems do not function in a manner to ensure a proper balance between timely and efficient decision making and adequate risk mitigation.

► This Gap is assigned a Red flag because it requires significant levels of inter-institutional cooperation including, procurement, audit and finance, to tackle a systemic issue which significantly impedes overall operation of the procurement system to ensure efficiency, effectiveness and value for money.

**External audit by the Office of the Auditor General:** The Office of the Auditor General is not sufficiently independent of the executive and is significantly under-resourced. Both of these factors impact on the ability of the Office of the Auditor General to undertake the full range of audit activities within its mandate, including specialised compliance and performance audits in public procurement.

► This Gap is assigned a Red flag because independence of the Office of the Auditor General is a key element of a well-functioning control framework necessary to ensure that procurement objectives are met and, where they are not met, that failures are identified and resolved to improve the system. In addition, it requires action outside the procurement sphere to remedy shortfalls in the audit system.

**Reports of the Auditor General:** The mechanism for review and determination of appropriate actions in response to reports of the Auditor General is limited in its effectiveness as there is systemic weakness in respect of implementation.

► This Gap is assigned a Red flag because review and implementation of actions required in response to audit reports is a key element of a well-functioning control framework necessary to ensure that procurement objectives are met and, where they are not met, failures are identified and resolved to improve the system. In addition, it requires action outside the procurement sphere to remedy shortfalls in the audit system.

**Follow-up on internal and external audit findings:** The available mechanisms for follow-up on internal and external audit findings are inadequately enforced. There is a poor level of compliance on implementation of both internal and external audit recommendations.

► This Gap is assigned a Red flag because lack of effective follow up and enforcement of internal and external audit findings significantly reduces actual and perceived accountability. In addition, it requires action outside the procurement sphere to remedy shortfalls in the audit system.

**Written procedures for internal controls:** Not all procuring entities have standard operating procedures in place and some of the instructions, regulations and manuals setting out control mechanisms and measures to be applied by procuring entities are outdated and need to be replaced or updated.





► This Gap is assigned a Red flag because it requires significant levels of inter-institutional cooperation, including by procurement, finance and audit institutions, to tackle a systemic issue which impedes overall operation of the procurement system to ensure efficiency, effectiveness and value for money.

**Written standards and procedures for procurement audits:** There are no specialised written standards and procedure for conducting compliance and performance procurement audits. There is the potential for overlap in the activities of the internal/external auditors and the audit function of ESPPRA.

► This Gap is assigned a Red flag because lack of written standards and procedure for conducting compliance and performance procurement audits significantly hinders the opportunity to identify and remedy failure to comply with procurement requirements and jeopardises delivery of effective outcomes including value for money. In addition, it requires action outside the procurement sphere to remedy shortfalls in the audit system and requires inter-institutional cooperation.

**Reporting lines to oversight bodies:** A reliable and comprehensive network of reporting lines to relevant oversight bodies is not yet formally established and implemented thus reducing the efficacy of the operation of the audit and control system.

► This Gap is assigned a Red flag because it requires significant levels of inter-institutional cooperation, including by procurement, finance and audit institutions, to tackle a systemic issue which impedes overall operation of the procurement system to ensure efficiency, effectiveness and value for money.

**Compliance with audit recommendations:** Compliance with the recommendations of the Internal Audit Office has been generally good but in the last financial year the level of compliance has dropped significantly. The Auditor General does not report on implementation of recommendations.

► This Gap is assigned a Red flag because lack of information on implementation of recommendations significantly hinders transparency and accountability. In addition, it requires action outside the procurement sphere to remedy shortfalls in the audit system.

**Systems to follow up on the implementation/enforcement of audit recommendations:** The systems in place to follow up on the implementation/enforcement of audit recommendations are ineffective due to systemic problems.

► This Gap is assigned a Red flag because lack of effective enforcement of audit recommendations significantly reduces actual and perceived accountability. In addition, it requires action outside the procurement sphere to remedy shortfalls in the audit system.

- **Recommendations**

**Comprehensive control framework - internal audit and control mechanisms (combined recommendations):** To improve internal control mechanisms and practices, ensure that all procuring entities have relevant and up to date standard operating procedures and internal control manuals in place. In order to ensure that procuring entities have relevant models available, replace or update instructions, regulations and manuals to be applied by procuring entities to ensure that they are consistent with the current audit and controls framework and provide for appropriate balance between efficiency of decision making and risk mitigation. The Audit Committee should be established and become operational as soon as possible.



**External audit by the Office of the Auditor General:** High level policy and decision making is required to ensure sufficient independence and resourcing of the Office of the Auditor General.

**Written standards and procedures for procurement audits:** Consider adoption of written standards and procedures specifically focused on the conduct of both compliance and performance procurement audits. Audit authorities and ESPRA need to jointly consider ways to better co-ordinate their audit activities to avoid overlap. This may be considered as part of implementation of the new Combined Assurance Framework.

**Reporting lines to oversight bodies:** Prioritise implementation of the draft Combined Assurance Framework to enhance inter-institutional cooperation and reporting lines.

**Compliance and follow up on internal and external audit findings (combined recommendations):** Put into place measures to ensure effectiveness of mechanisms for review and determination of actions in response to reports of the Auditor General and for follow up and implementation of findings and recommendations of both internal and external audit.

### Summary of substantive gaps and recommendations of Indicator 12

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
12(a)	There are Internal control/audit mechanisms and systems but they do not function in a manner to ensure appropriate oversight of procurement	H ▶	To improve internal control mechanisms and practices, ensure that all procuring entities have relevant and up to date standard operating procedures and internal control manuals in place. In order to ensure that procuring entities have relevant models available, replace or update instructions, regulations and manuals to be applied by procuring entities to ensure that they are consistent with the current audit and controls framework and provide for appropriate balance between efficiency of decision making and risk mitigation. The Audit Committee should be established and become operational as soon as possible
	Internal controls are weak. Some of the instructions, regulations and manuals setting out control mechanisms and measures are outdated and need to be replaced or updated	H ▶	
	The internal control/audit mechanisms and systems do not function in a manner to ensure a proper balance between timely and efficient decision making and adequate risk mitigation	H ▶	
	Office of the Auditor General is not sufficiently independent of the executive and is significantly under-resourced	H ▶	



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
	The mechanism for review and determination of appropriate actions in response to reports of the Auditor General is limited in its effectiveness as there is systemic weakness	H ►	Put into place measures to ensure effectiveness of mechanisms for review and determination of actions in response to reports of the Auditor General and for follow up and implementation of findings of both internal and external audit recommendations
	The available mechanisms for follow-up on internal and external audit findings are inadequately enforced. There is a poor level of compliance on implementation of both internal and external audit recommendations	H ►	
12(b)	Not all procuring entities have standard operating procedures in place	H ►	See recommendation at 12(a)
	There are no specialised written standards and procedures for conducting compliance and performance procurement audits	H ►	Consider adoption of written standards and procedures specifically focused on the conduct of both compliance and performance procurement audits. Audit authorities and ESPRA to better co-ordinate their audit activities to avoid overlap. This may be considered as part of implementation of the new Combined Assurance Framework
	A reliable and comprehensive network of reporting lines to relevant oversight bodies is not yet formally established and implemented	H ►	Prioritise implementation of the draft Combined Assurance Framework to enhance inter-institutional cooperation and reporting lines
12(c)	Compliance with the recommendations of the Internal Audit Office has dropped significantly. The Auditor General does not report on implementation of recommendations	H ►	Recommendation as at 12(a) Put into place measures to ensure effectiveness of mechanisms for review and determination of actions in response to reports of the Auditor General and for follow up and implementation of findings of both internal and external audit recommendations
	The systems in place to follow up on the	H ►	



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
	implementation/enforcement of audit recommendations are ineffective due to systemic problems		

### 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.

- **Synthesis of the indicator**

The legal framework sets out the process and timelines for applications for review (challenge) to the procuring entity and administrative review (appeal) to the Independent Review Committee (IRC). Application for review by the IRC triggers automatic suspension of the award decision. The IRC has detailed Rules of Procedure and makes clear decisions based on available evidence, with a range of remedies applied which are enforceable and subject to a right of appeal to the Courts. The time frames specified for submission of applications and for issue of decisions are reasonable and should not unduly delay the procurement process or make an appeal unrealistic. However, in practice, the IRC does not make decisions within the specified statutory time scale. Once made, decisions are published promptly on the ESPPRA website. The Procurement Act requires that members of the IRC Standing Review Panel have no direct or indirect personal interest in public procurement functions. IRC Secretariat services are provided by the Audit and Compliance department of the ESPPRA, which is significantly under-resourced.

- **Findings**

The legal framework sets out the process and timelines for applications for review (challenge) and administrative review (appeal). The initial application for review is submitted to and considered by the controlling officer or Chief Executive Officer (investigating officer) of the procuring entity conducting the procurement. The Procurement Act requires the investigating officer immediately to institute an investigation and, upon conclusion within a specified time frame, to issue a written notice which must include reasons for a decision to uphold the application in whole or in part or dismiss the application. In the case of administrative review by the IRC, the Procurement Act requires the IRC to immediately institute an investigation and lists the powers of the IRC and required content of the IRC's decision together with the time frame for decision making. There are additional detailed provisions in the IRC Rules



of Procedure on process and content of written submissions and filing of additional supporting evidence. The Rules of Procedure for the IRC are available for download from the ESPPRA website, Review and Appeals tab.<sup>52</sup> According to the Procurement Act, submission of an application for administrative review triggers suspension of award of the contract pending completion of the administrative review process. The MAPS Assessment Team reviewed 29 decisions of the IRC, decided between 2015 (when the IRC became operational) and 2023. The analysis confirms that the IRC exercises its legal authority to impose a range of remedies as designated by the Procurement Act. The remedies ordered include directions to re-evaluate financial proposals, apply evaluation criteria in the manner set out in the tender documents and set aside of decisions to award and orders to start afresh. The decisions read as balanced and unbiased. In a recent decision concerning an application for recusal due to alleged bias there is a clear record of how the IRC considered these issues in detail before rejecting the application.

The number of applications to and decisions by the IRC is not high. In 2022/23 the IRC published decisions in four cases. Decisions in each of the preceding five years were between four and six. IRC decisions are published online on the ESPPRA website, Review and Appeals tab, under the heading “Decisions”. There is no statutory timescale specified for publication of cases.

The time frames specified for submission of applications for review (challenge) and administrative review (appeal) and for issue of decisions are reasonable and should not unduly delay the procurement process or make an appeal unrealistic. However, in practice the IRC does not make decisions within the specified statutory time scale of 15 working days after submission of the application. This appears to be due to a combination of high levels of paperwork and logistical challenges in arranging oral hearings. There is a fee for processing an application for review by the IRC, payable by the applicant. The fee is 0.5 percent of the tender value, subject to a minimum of SZL 5,000 (approximately USD270) and SZL 100,000 (approximately USD 5460) maximum. The administrative fee was not raised by the private sector as a specific issue, but the associated legal costs were flagged as an area of concern.

Decisions of the IRC are final, enforceable and subject to a right of appeal to the courts. The ESPPRA has measures available to assist in enforcement. ESPPRA may, upon receipt of an IRC decision, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the decision and compliance with IRC decisions falls within the remit of the ESPPRA’s continuous monitoring function.

The Procurement Act requires that members of the IRC Standing Review Panel have no direct or indirect personal interest in public procurement functions. Members of the Standing Review Panel who are selected for appointment to an Independent Review Committee are required to formally declare that they have no interest, direct or indirect, in the case subject of the review.

IRC Secretariat services are provided by the Audit and Compliance department of the ESPPRA, in particular by the acting manager of that department and a compliance assistant with input as necessary from the CEO ESPPRA and finance department. ESPPRA is significantly under-resourced in terms of providing support to the IRC. The combined role of the Audit and Compliance department of the ESPPRA in undertaking audit, compliance and providing IRC Secretariat services raises concerns of potential conflicts of interest. This is identified as a Gap under Indicator 5.

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<sup>52</sup> [https://esppra.co.sz/sppra/review\\_appeals.php](https://esppra.co.sz/sppra/review_appeals.php), accessed 14 June 2023.



- **Gaps**

**Time frame for decision making:** IRC decisions are rarely made within the time frame specified in the law. Delays in decision making reduce the efficacy of the system of appeals and may be a disincentive for suppliers considering submitting an appeal.

**Resources and staffing of the IRC:** The IRC is not adequately staffed as it relies on ESPPRA for its secretariat functions and the ESPPRA is significantly under-resourced.

► This Gap is assigned a Red flag because insufficient capacity of the IRC has a negative impact on the compliance environment and impedes the overall effectiveness of the procurement system. In addition, issues of resources and funding do not lie solely within the procurement sphere.

**Publication of IRC decisions:** There is no timescale specified in the Procurement Act or PPR for publication of decisions. A statutory requirement assists to provide additional reassurance of transparency in decision making. This is identified as a Minor Gap.

- **Recommendations**

**Time frame for decision making:** Consider ways in which to streamline the appeals process, for example, by allowing for decisions on the basis of written submissions alone (if permitted under national law) to both speed up the process and also, potentially, reduce costs to parties of legal representation in oral hearings.

**Resources and staffing of the IRC:** Allocate sufficient resources and funding to ensure that the functions and activities of the IRC are appropriately supported.

**Publication of IRC decisions:** Include clear provisions in the legal/regulatory framework clearly setting out the designated location of publication of IRC decisions and specifying timelines for publication.

### Summary of substantive gaps and recommendations of Indicator 13

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
13(b)	IRC decisions are rarely made within the time frame specified in the law.	H	Consider ways to streamline the appeals process, both to speed up the process and also, potentially, reduce parties' legal costs in oral hearings.
	The IRC is not adequately staffed as it relies on ESPPRA for its secretariat functions and the ESPPRA is significantly under-resourced.	H ►	Allocate sufficient resources and funding to ensure that the functions and activities of the IRC are appropriately supported.



## 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.

### • **Synthesis of the indicator**

The Prevention of Corruption Act No.3 of 2006 (POCA), sets out in detail offences with regard to: contracts and tenders (inducement), corrupt transactions by or with public or private bodies, cheating the public revenue and conflicts of interest. The UN Office on Drugs and Crime (UNODC) has recommended harmonisation and alignment of national legislation with UNCAC. The public procurement legal framework does not include comprehensive definitions of fraud, corruption and other prohibited practices in procurement and do not specifically mandate inclusion of provisions on prohibited practices in procurement and contract documents. Individual responsibilities, accountability and penalties for fraud, corruption and other prohibited practices in procurement as well as conflict of interest are addressed in legislation, but the overall framework is fragmented and detailed provisions on the Leadership Code of Conduct mandated by the Constitution are still not in place.

Procuring entities are required to report allegations, to the Anti-Corruption Commission (ACC) or the Royal Eswatini Police Service (REPS) and there are clear reporting routes available. Eswatini does not have dedicated whistle blower legislation and public confidence in the effectiveness of whistle blower protection is low. There is no mechanism in place for systematically identifying, mitigating and preventing corruption in the public procurement cycle. Comprehensive statistics on corruption-related legal proceedings and convictions are not compiled and published annually. There is insufficient evidence available to conclude that there is systematic application of an effective sanctions and enforcement system relating specifically to public procurement. There is a system for debarment from participation in procurement, including on grounds of corrupt or fraudulent practices with names of debarred suppliers published on the ESPRA website. The Register for Tender Defaulters prohibited from participation by order of the Court, is not in operation.

The anti-corruption framework is not comprehensive, there is no national oversight board to oversee implementation of strategies or plans and the National Anti-Corruption Strategy is only partially implemented. There is no monitoring or evaluation capacity in place to enforce the existing framework and effective inter-institutional cooperation is lacking. In February 2024, the Prime Minister announced the launch of an Anti-Corruption Task Team comprising the Director of Public Prosecutions, National Commissioner of Police and the Commissioner of the Anti-Corruption Commission “to be responsible for investigating corruption allegations, prosecuting cases, implementing preventive measures, and strengthening legal frameworks to address corruption effectively.”<sup>53</sup>

### • **Findings**

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<sup>53</sup> MAPS Assessment Team also noted reference to an Inter-Agency Task Force Against Corruption being re-established in 2019. <https://www.gov.sz/index.php/latest-news/204-latest-news/2364-editors-forum>





The Prevention of Corruption Act No.3 of 2006 (POCA), sets out in detail offences with regard to: contracts and tenders (inducement), corrupt transactions by or with public or private bodies, cheating the public revenue and conflicts of interest. The public procurement legal framework does not include comprehensive definitions of fraud, corruption and other prohibited practices in procurement. Analysis by UNODC of relevant provisions in POCA defining fraud, corruption and other prohibited practices found that whilst the offence of corruption is criminalised under POCA, POCA “does not define the offence of corruption but rather criminalizes and punishes corrupt practices” with the criminalized acts being bribery, money laundering, conflict of interest and cheating of the public revenue.<sup>54</sup> The UNODC Country Report 2016 identified internal discrepancies as to how bribery offences are covered in POCA and it recommended harmonisation in the legislation. It made further recommendations to ensure alignment of national legislation with UNCAC. According to the Anti-Corruption Commission, no implementing technical committee has been established to address these discrepancies. A draft Bill was prepared some years ago to address issues raised in this UNODC report, but it has not been passed into law and the issues identified remain unresolved.

The legal framework includes provisions in POCA, PFMA and the Procurement Act, covering individual responsibilities, accountability and penalties for fraud, corruption and other prohibited practices in procurement. The legal framework also contains definitions and provisions concerning conflicts of interest including requirements for disclosure of interests by public officers, members of a Tender board and evaluation committees as well as politicians who have responsibility for procurement. However, the framework is fragmented and there is a lack of a comprehensive regulatory framework covering declaration and management of conflicts of interest. The detailed provisions on the Leadership Code of Conduct mandated by the Constitution are still not in place. There are no specific provisions covering requirements for a cooling-off period for former public officials. The UNODC Country Review Report 2020<sup>55</sup> noted in its observations on provisions in the Public Service Act and the failure to implement the Leadership Code of Conduct that “the lack of a comprehensive regulatory framework to declare and manage conflicts of interest hinders Eswatini’s ability to effectively implement interest disclosure requirements”.

The Procurement Act and PPR do not specifically mandate inclusion of provisions on prohibited practices in procurement and contract documents. Pending introduction of standard bidding and contract documents for mandatory use by all procuring entities, the legal/regulatory framework does not compel procuring entities to include references on all of the following in procurement and contract documents: fraud, corruption and other prohibited practices, conflict of interest and unethical behaviour. Procuring entities use a range of different procurement and contract documents and there is a lack of consistency in provisions on fraud, corruption and other prohibited practices.

Procuring entities are required to report allegations, to the Anti-Corruption Commission (ACC) or the Royal Eswatini Police Service (REPS) and there are clear reporting routes available. POCA does not specify a duty to report but this requirement is implied by reference to the offence of failure to report under the heading “Duty to report corrupt instructions”. In theory, other institutional stakeholders may also refer reports

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<sup>54</sup> UNODC Country Review Report of the Kingdom of Swaziland, 2016, para.15.

<sup>55</sup> Full country report:

[https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2020\\_02\\_19\\_Eswatini\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2020_02_19_Eswatini_Final_Country_Report.pdf)



flagging concerns about alleged corruption direct to ACC. In practice, however, this reporting route is rarely used. Eswatini does not have dedicated whistle blower legislation and public confidence in the effectiveness of whistle blower protection is low.

There is insufficient evidence available to conclude that there is systematic application of an effective sanctions and enforcement system relating specifically to public procurement. Data provided by the Royal Eswatini Police Service and Anti-Corruption Commission on investigation of complaints and prosecutions is not broken down in a manner to identify procurement specific related offences. The Procurement Act provides for a process of administrative debarment, including on grounds of corrupt or fraudulent practices. Debarred tenderers are listed on the Register of suspended tenderers maintained by ESPPRA. There is one supplier listed on that Register. POCA provides for the establishment and operation of a Register for Tender Defaulters by the Accountant-General, with listed defaulters automatically suspended from participation. The Register for Tender Defaulters is not in operation.

The anti-corruption framework is not comprehensive, there is no national oversight board to oversee implementation of strategies or plans and the National Anti-Corruption Strategy is only partially implemented. There is no monitoring or evaluation capacity in place to enforce the existing framework and effective inter-institutional cooperation is lacking. In practice, the Anti-Corruption Commission is not fully independent of government and is inadequately staffed to fulfil its mandates. There is currently no mechanism in place for systematically identifying and mitigating corruption risks in the public procurement cycle. Comprehensive statistics on corruption-related legal proceedings and convictions are not compiled and published annually. In February 2024 the Prime Minister announced the launch of an Anti-Corruption Task Team comprising the Director of Public Prosecutions, National Commissioner of Police and the Commissioner of the Anti-Corruption Commission “to be responsible for investigating corruption allegations, prosecuting cases, implementing preventive measures, and strengthening legal frameworks to address corruption effectively.”<sup>56</sup>

- **Gaps**

**Legal definitions of prohibited practices:** Legal definitions of prohibited practices are not fully aligned with obligations derived from UNCAC. The draft Bill prepared to address issues raised in UNODC report has not been passed into law and identified issues, including those related to definitions, remain unresolved.

► This Gap is assigned a Red flag because failure to align with international obligations jeopardises the overall effectiveness of the anti-corruption framework including its application to public procurement. In addition, required changes to anti-corruption legislation do not lie solely within the procurement sphere.

**Conflicts of interest and cooling off-period:** The framework is fragmented and there is a lack of comprehensive regulatory framework covering declaration and management conflicts of interest. The detailed provisions on the Leadership Code of Conduct mandated by the Constitution are still not in place. There are no specific provisions covering requirements for a cooling-off period for former public officials.

► This Gap is assigned a Red flag because a fragmented and incomplete framework addressing conflicts of interest undermines the principle of transparency. In addition, required changes to anti-corruption

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<sup>56</sup> MAPS Assessment Team also noted reference to an Inter-Agency Task Force Against Corruption being re-established in 2019. <https://www.gov.sz/index.php/latest-news/204-latest-news/2364-editors-forum>



legislation and implementation of the Leadership Code of Conduct require actions outside the procurement sphere.

**Mandated use of specified provisions including prohibited practices and incorporation in procurement documents:** The public procurement legal/regulatory framework does not mandate use of specified provisions on prohibited practices in procurement documents and there is no standard set of provisions or instructions on use, applicable to all procuring entities. This potentially reduces the perceived importance of inclusion of these provisions and means that practices are likely to be inconsistent. Procurement and contract documents do not always include provisions on fraud, corruption and other prohibited practices and relevant provisions, when used, are not consistent.

**Evidence of systematic application of an effective sanctions and enforcement system:** There is no comprehensive source of evidence of systematic application of an effective sanctions and enforcement system relating to public procurement.

► This Gap is assigned a Red flag because lack of evidence of systematic application of effective sanctions and enforcement of anti-corruption measures substantially undermines public confidence in the procurement system as a whole and limits opportunities to use data to identify areas for improvement to increase effectiveness of procurement outcomes. In addition, responsibility for putting in place a system for gathering relevant evidence and collection, analysis and publication of that information requires broad inter-institutional cooperation and should be part of the wider anti-corruption framework review and implementation activities.

**Register of Tender Defaulters:** There is a system for administrative debarment with due process but it is not possible to assess the consistency of application, with only one supplier currently listed and very few cases. The Register of Tender Defaulters, which is the responsibility of the Accountant General, is not operational, thus hindering the operation of a more robust system for suspension/debarment in the public procurement context.

► This Gap is assigned a Red flag because lack of the Register of Tender Defaulters reduces transparency and accountability. In addition, responsibility for establishment and operation of the Register of Defaulters does not fall within the functions of the ESPRA and requires wider inter-institutional cooperation.

**Evidence of enforcement and application of penalties:** There is evidence of prosecution of fraud and corruption cases but no public procurement specific data is available to provide a detailed quantitative analysis. The number of debarments by ESPRA is limited and the Register of Tender Defaulters provided for in POCA is not operational.

► This Gap is assigned a Red flag because lack of evidence of enforcement and application of penalties undermines public confidence in the procurement system as a whole and limits opportunities to use data to identify areas for improvement to increase effectiveness of procurement outcomes. In addition, responsibility for collection and publication of data providing evidence of enforcement and application of stated penalties for contravention of laws on fraud, corruption and other prohibited practices requires broad inter-institutional cooperation. This lies beyond solely the procurement sphere, being part of the wider government-led anti-corruption framework review and implementation activities. (See 14(a)(a)).



**Anti-corruption framework:** The anti-corruption framework is disjointed and incomplete, thus significantly reducing the likelihood of prevention and/or detection of fraud and corruption specifically associated with public procurement.

► This Gap is assigned a Red flag because a poorly functioning anti-corruption framework undermines public confidence in the procurement system as a whole. Creation of a well-functioning, joined up and comprehensive anti-corruption framework is a whole system issue. It requires a combination of legislative action and institutional review with full governmental support, and cooperation between a number of ministries and institutions.

**Mechanism for systematically identifying and mitigating corruption risks in public procurement:** There is no mechanism in place for systematically identifying and mitigating corruption risks in the public procurement cycle.

► This Gap is assigned a Red flag because it significantly impedes achieving the objectives sought by public procurement, including transparency and accountability. In addition, the creation of a mechanism for the systematic identification and mitigation of corruption risks requires cooperation between a number of ministries and institutions.

**Statistics on corruption-related legal proceedings and convictions:** Comprehensive statistics on corruption-related legal proceedings and convictions are not compiled and published annually.

► This Gap is assigned a Red flag because it significantly impedes achieving the objectives sought by public procurement, including transparency and accountability. Lack of publicly available statistics on corruption-related legal proceedings and convictions also undermines public confidence in the procurement system as a whole. In addition, responsibility for collection and dissemination of data relating to corruption does not lie with ESPRA and cannot be immediately mitigated through actions in the public procurement system.

**Measures are in place for the detection and prevention of corruption associated with procurement:** There are limited and disjointed measures in place for detection and prevention of corruption associated with procurement.

► This Gap is assigned a Red flag because it significantly impedes achieving the objectives sought by public procurement, in particular ensuring effective conduct of procurement processes, with value for money outcomes. In addition, putting into place comprehensive measures for detection and corruption associated with procurement requires cooperation between a number of ministries and institutions, as well as involvement of control organisations, legal oversight bodies and civil society.

**Ethics and integrity training for the procurement workforce:** Ethics and Integrity training is included as part of more general training for officials but there are no special procurement focused integrity training programmes offered to the procurement workforce.

► This Gap is assigned a Red flag because lack of focussed ethics and integrity training hinders reduction of non-ethical behaviours in procurement with consequent negative impact on public trust in the overall system, including poor public participation, resulting in poor procurement outcomes. In addition, putting in place special procurement focused ethics and integrity training programmes and ensuring regular participation by the procurement workforce requires cooperation and, potentially sharing of resources between a number of ministries and institutions as well as procuring entities.

**Civil society:** There is no civil society organisation identified by the MAPS Assessment Team with a specific procurement focus within their agenda and which is currently in a position to actively provide



comprehensive oversight and social control in public procurement. Eswatini does not have an environment that enables civil society organisations to have a meaningful role as third-party monitors. Evidence is not available to conclude that civil society is currently in a position to shape and improve integrity in public procurement in a consistent or meaningful manner.

► This Gap is assigned a Red flag because the absence of active oversight and social control can significantly impede the creation and maintenance of a sound procurement environment. In addition, in order to mitigate this Gap, procurement focused civil society organisations may need to be created, or current activities of relevant CSOs enhanced, with relevant support provided. These measures lie beyond the public procurement sphere.

**Business organisations:** Business organisations do not have specific programmes to support increased integrity through, for example, development of internal compliance measures.

► This Gap is assigned a Red flag because lack of measures to support increased integrity impedes overall transparency and confidence in the procurement system and it requires action outside the procurement sphere with inter-institutional cooperation between, as a minimum, ESPPRA, anti-corruption institutions and business representative organisations.

**Secure channels for reporting, whistle blower protection and disclosures:** Public confidence in the efficacy of available channels for reporting cases of fraud, corruption or other prohibited practices is low. There is no specialised legislation to protect whistle-blowers. Public confidence in the protection of whistle-blowers in practice under existing legislation is low. There is no functioning system to follow up on disclosure.

► This Gap is assigned a Red flag because it significantly impedes the objective of ensuring operation of secure mechanisms for reporting prohibited practices and because it requires inter-institutional cooperation and action outside the procurement sphere, including by anti-corruption institutions and the police as well as possible non-procurement related legislative changes.

**Codes of conduct/codes of ethics and financial disclosure rules:** The Code of Conduct and Public Service Charter are of general application and do not have provisions specifically tailored to those involved in public financial management, including procurement. Whilst the Code of Conduct, Oath of Office and Service pledge is mandatory, it is not procurement specific and not of universal application as it does not apply to officials in Category A Parastatals or Local Government. In practice, provisions in the Public Service Act, Code of Conduct and Public Service Charter on financial disclosure are minimally observed.

► This Gap is assigned a Red flag because it significantly impedes the objective of preventing unethical or corrupt practices and because it requires inter-institutional cooperation and action outside the procurement sphere as it concerns Charter and codes issued pursuant to the Public Service Act and of wider application than just procurement.

**Training on ethics and integrity in public procurement:** The MAPS Assessment team did not find evidence of a schedule of regular and repeated training programmes on ethics and integrity tailored to public procurement delivered to all officials involved in procurement in all types of procuring entities.

► This Gap is assigned a Red flag because it significantly impedes the objective of preventing unethical or corrupt practices and because it requires inter-institutional cooperation and actions beyond the procurement sphere, including involvement of CSOs and the business sector whose needs and opinions should be understood by procurement officials.



**Records of conflicts of interest, financial disclosure and beneficial ownership:** There are no effective arrangements for obtaining and retaining beneficial ownership information. Record keeping is generally poor. It is highly unlikely that information currently available to decision makers, even if collected in a systematic manner, is sufficiently comprehensive or accessible to be effectively utilized to prevent corruption risks throughout the public procurement cycle.

► This Gap is assigned a Red flag because it significantly impedes the objective preventing unethical or corrupt practices and because it requires inter-institutional cooperation and actions beyond the procurement sphere, including collection of and access to company related information.

- **Recommendations**

**Government led review – definitions, effective sanctions, data collection and evidence of enforcement combined recommendation):** The Government of Eswatini to coordinate review and implementation of revised or new anti-corruption legislation to align with obligations deriving from UNCAC and other relevant legally binding international anti-corruption agreements. As part of this process there must be co-operation between all relevant institutions, including the anti-corruption authorities, ESPPRA and Ministry of Finance, to ensure alignment between revised or new anti-corruption legislation and the public procurement legal and regulatory framework.

The government-led review and implementation of revised or new anti-corruption legislation should include consideration and introduction of a system for collection and publication of comprehensive evidence of the application of effective sanctions, enforcement and penalties applied in each case. This should include information specifically relating to public procurement related cases and, in that context, should draw together different sources including, but not limited to, information relating to debarment currently published by ESPPRA and Register of Tender Defaulters, when operational.

**Conflicts of interest and cooling off-period:** Implement recommendations of UNODC and ensure alignment between revised provisions in POCA/anti-corruption framework and the procurement legal/regulatory framework. Include specific provisions covering appropriate requirements for a reasonable cooling off period for former public officials.

**Mandated use of specified provisions and incorporation in procurement documents:** To stress the importance of addressing the issue of prohibited practices in procurement documents, include provisions in the legal/regulatory framework requiring incorporation of specified definitions and provisions on prohibited practices in procurement and contract documents. In order to ensure consistency, mandate use of the same set of standard documents by all procuring entities (ministries, local government and Category A parastatals) which include relevant standard provisions on procurement prohibited practices, together with clear instructions and guidance.

**Register for Tender Defaulters:** The Register of Tender Defaulters should be established and operated in accordance with statutory requirements. The Register of Tender defaulters should be made publicly available on-line and be linked to/accessible from ESPPRA and MoF tender pages, and e-GP when established.





**Anti-corruption framework, mechanisms for identifying, preventing & mitigating corruption in procurement and statistics (combined recommendation):** The anti-corruption framework requires thorough review and updating at legislative, regulatory, institutional and implementation level to create a coherent and effective framework. Provisions and measures specific to public procurement should be considered and implemented as part of this process including a reliable and fully resourced mechanism for identification and mitigation of public procurement related corruption risks by procuring entities and stakeholder institutions. Reviewing and updating the anti-corruption framework, with particular reference to public procurement, requires an holistic approach and so should also involve measures to: raise public awareness of procurement related risks; improve reporting lines to include on-line reporting; protection of whistleblowers; regular annual publication of corruption related statistics and procurement statistics; enhanced engagement of civil society, and; use of modern technology such as a comprehensive end-to-end e-GP system.

**Integrity training for the procurement workforce (combined recommendations):** Special ethics and integrity training programmes or dedicated slots in regular training programmes for staff involved in procurement, should be prepared and delivered. In order to ensure consistency at national level, this should be designed for and attended by all officials involved in procurement in central government, local government and Category A parastatals. This needs to be a coordinated effort involving procuring entities, ESPPRA, Anti-Corruption Agency and other relevant institutions engaged in implementing the anti-corruption framework. This training should be mandatory and be delivered on a regular basis to procurement officials and staff of procuring entities whose work includes public procurement, in order to strengthen awareness and clarify responsibilities and reporting channels.

Ideally the programmes should be developed and delivered by a multi-disciplinary team drawing on expertise from all relevant institutional stakeholders and also involving the wider stakeholder community including CSOs and the business sector to lend their perspectives.

**Civil society:** Government should actively encourage and support strong and credible civil society organisations to exercise meaningful social audit and control in public procurement as an important element in creating and maintaining a sound environment. The introduction of e-GP, with the attendant increase in publicly available data provides a focused opportunity to develop and implement relevant measures, which can start before roll out of e-GP and continue as it is introduced and operated. Civil society should be engaged in discussions on the development and roll-out of e-GP as well as being involved in relevant training and other capacity building to enable them to monitor public procurement. Formal channels for ongoing regular engagement and feedback on public procurement by civil society should be promoted and actively supported by government and enhance quality of debate and assist in improving integrity in public procurement.

**Business organisations:** Encourage and support supply side measures to increase focus on integrity in public procurement for example by regular and active participation in business led education and training events in a joined up manner, involving both procurement and anti-corruption focused stakeholder institutions.

**Secure channels for reporting, whistle blower protection and disclosures:** Undertake a critical review of current mechanisms for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour in the context of public procurement to identify potential changes and measures for improvement. One step in enhancing general public confidence will be to implement a UNCAC





recommendation to adopt “measures to provide effective protection against unjustified treatment for reporting persons”. Another measure is publication of reliable consolidated data on investigations and actions taken.

**Codes of conduct/codes of ethics and financial disclosure rules:** Prepare a code of conduct/ethics, which should be complementary to the existing Code of Conduct and Public Service Charter, setting out special provisions applying to those involved in public procurement. This code of conduct/ethics should specifically address conflicts of interest and financial disclosure requirements. It should be drafted in such a manner so as to be relevant to officials in all types of procuring entities and be mandatory in nature with consequences of failure to comply clearly described.

**Records of conflicts of interest, financial disclosure and beneficial ownership:** Introduce a system of universal application to ensure consistent provision and filing of conflict of interest statements, financial disclosure forms and also information on beneficial ownership. Implement UNCAC recommendations in particular in relation to asset declaration and beneficial ownership.

#### Summary of substantive gaps and recommendations of Indicator 14

Please see full wording of Gaps and Recommendations above.

Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
14(a)	Legal definitions of prohibited practices are not fully aligned with obligations derived from UNCAC	H ►	Government to coordinate review and implementation of revised or new anti-corruption legislation
	Lack of comprehensive regulatory framework covering declaration and management of conflicts of interest and cooling off period	H ►	Implement recommendations of UNODC and ensure alignment between revised provisions in POCA/anti-corruption framework and the procurement legal/regulatory framework
14(b)	Use of specified and standard provisions including provisions on prohibited practices in procurement documents are not mandated	H	Include provisions in the legal/regulatory framework requiring incorporation of specified definitions and provisions on prohibited practices in procurement and contract documents
14(c)	Register for Tender Defaulters is not operational	H ►	Register of Tender Defaulters should be established and operated in accordance with statutory requirements
	No public procurement specific data is available on prosecution, enforcement and application of penalties	H ►	Government review (see above) to include consideration of system for collection and publication of comprehensive evidence



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (▶)	Recommendations
14(d)	Anti-corruption framework is disjointed and incomplete	H ▶	Updating at legislative, regulatory, institutional and implementation level to create a coherent and effective framework. Co-ordinate efforts to create a reliable and fully resourced mechanism for identification and mitigation of public procurement related corruption. Improve reporting lines. Ensure regular annual publication of corruption related statistics and procurement statistics
	No mechanism in place for systematically identifying and mitigating corruption risks in the public procurement	H ▶	
	Comprehensive statistics on corruption-related legal proceedings and convictions are not compiled and published annually	H ▶	
	There are limited and disjointed measures in place for detection and prevention of corruption associated with procurement	H ▶	Regular ethics and integrity training programmes, mandatory for all staff conducting procurement at all types of procuring entities, developed and delivered by a multi-disciplinary team
	There are no special procurement focused ethics and integrity training programmes offered to the procurement workforce	H ▶	
14(e)	No civil society organisation in a position to actively provide comprehensive oversight and social control in public procurement	H ▶	Actively encourage and support strong and credible civil society organisations to exercise meaningful social audit and control in public procurement
	Business organisations do not have specific programmes to support increased integrity	H ▶	Encourage and support supply side measures to increase focus on integrity in public procurement
14(f)	Public confidence in reporting channels and protection is low	H ▶	Critical review of current mechanisms for reporting
14(g)	Code of Conduct, Oath of Office and Service Pledge not procurement specific or of universal application	H ▶	Public procurement code of conduct of universal application to officials in all types of procuring entities to include conflicts of interest and financial disclosure
	No regular and repeated training for procurement on ethics and integrity in public procurement	H ▶	Develop and deliver a regularly scheduled training programme specifically focused on ethics and integrity in procurement involving the wider stakeholder community.



Substantive gap		Risk classification (H-high, M-medium, L-low) and red flags (►)	Recommendations
	No effective arrangements for obtaining and retaining beneficial ownership information.	H ►	Introduce system of universal application to ensure consistent provision and filing of conflict of interest statements, financial disclosure forms and also information on beneficial ownership

## 4. Consolidated Recommendations

Please see the Assessment at section 3 of this Report for more explanation and the Matrix in Volume II for full wording of the following Recommendations and the Gaps to which they relate.

### Pillar I – Legal, Regulatory and Policy Framework

In order to ensure appropriate standards for competitive procedures, introduce enhanced measures to ensure that the choice of procurement procedure is, in all cases, clearly documented and to limit use of emergency and single source, with clear supporting policy and guidelines. To ensure that barriers to entry are minimised, review the impact of restrictions on international participation and consider amendments. To promote a level playing field for all suppliers, include in the legal framework specific rules applying to participation of state-owned enterprises as bidders, aimed at promoting fair competition. Enhance quality and competition by updating relevant provisions in the legal framework to specifically refer to international or other recognized equivalent norms and to the principle of equivalence and functionality. To reduce misuse of contract amendments, revise the legal/regulatory framework to include provisions on contract amendments which detail the circumstances where they may be permitted and any conditions which must be met. Increase coherence of the system by including appropriate standard clauses for dispute resolution in all contract documents.

Better alignment with e-procurement is needed in general. The legal framework should be updated to include provisions to ensure the consistent application of electronic technologies and require standardized formats, technical equipment and connection arrangements and procedures to grant unrestricted and full access to e-procurement. It will also be necessary include provisions in the legal framework to make it mandatory to inform potential bidders which parts of the processes will be managed electronically and to ensure document retention and security protocols are in place for both paper based and electronic procurement. Periods for retention of procurement records need to better align with limitation periods for prosecution of fraud and corruption cases. Measures need to be introduced to ensure that procurement records and documents are collated and retained in a single file in one location at procuring entity level.



In order to ensure consistency and enhance understanding and application for all stakeholders, it is important to prioritise the finalisation and adoption of: (1) a set of standard tender documents with mandatory clauses; and (2) standard contract conditions, and mandate their use by all procuring entities (Central government, local government and category A parastatals). It is also recommended to prepare and publish a comprehensive procurement manual covering, as a minimum, all procedures for the correct implementation of the Procurement Act and PPR.

To support sustainable development in Eswatini, prepare a Sustainable Public Procurement (SPP) policy/strategy (economic, environmental (including climate considerations) and social (including gender equality)) in support of broader national policy objectives and reflecting national priorities. Include a clear implementation plan/road map to cover introduction of systems and tools to operationalize, facilitate and monitor the application of SPP and identify and provide for any amendments necessary to the legal/regulatory framework to allow for sustainability to be fully incorporated at all stages of the procurement cycle.

## Pillar II – Institutional Framework and Management Capacity

Prioritise implementation of more robust commitment controls, such as those flowing from operation of a suitable IFMIS when effectively integrated with the e-GP system and application of conditions for use of less competitive and non-competitive methods. Pending full roll out and integration of IFMIS and e-GP system, put into place better mechanisms on budget execution focusing on major budget expenditure using a risk based approach. Include provisions in the legal and regulatory framework specifying consistent standard invoice payment periods. As an initial step this can be addressed in the new standard tender documents and contract terms.

To address and remedy the lack of coherence in the system due to operation of two parallel systems, undertake an institutional review, to provide proposals for revised or new institutional and operational structure/s, functions and operational responsibility/ies which are well aligned with operation of the e-GP system and with the aim of improving transparency and effective operation of the whole public procurement system and the involved institutions. As well as looking at the functions, responsibilities and activities of the ESPPRA and Technical Secretariat it is also advisable to review the current activities of the Eswatini Government Tender Board and Government Central Stores as well as future requirements for: consolidated procurement of common use or specialised items; solicitation and management of framework agreements; use of e-catalogues, e-market places and e-auctions; as well as management of complex procurement, which could include PPPs, and procurements requiring specialised legal or technical expertise.

To provide clarity, amend the procurement legal/regulatory framework to clearly allocate responsibility for proposing change/drafting amendments to the Procurement Act and implementing regulations and to assign the specific functions of designing and managing centralised online platforms and other e-procurement systems. Improve data availability by ensuring coherent and clear messaging and enforcement measures to ensure that all procuring entities submit information and reports to the ESPPRA in accordance with statutory obligations and timescales. In that context, consider measures to enforce the obligation on procuring entities to submit procurement plans to the ESPPRA and ensure publication of all annual procurement plans on the ESPPRA website.



The Government should consider prioritizing funding for ESPPRA regulatory and expert functions to ensure effective operation of the public procurement system in Eswatini and to facilitate effective roll out of the e-GP system. Consider also, measures to increase or diversify sources of ESPPRA funding. The ESPPRA should identify possible conflicts of interest in its activities and organisational structure, including addressing its role as IRC secretariat, and then prepare and publish clear conflicts management policy. To enhance efficient operation of the system, consider raising the financial thresholds for approvals by the controlling officer or Chief Executive, subject to proper operation of appropriate safeguards to ensure transparency and accountability.

Comprehensive information on procurement is not available to the public or easily accessible at one location. **Pending roll out of e-GP system**, start immediately to put into place measures to drive changes in behaviours, particularly in relation to publication at a single on-line location in a consistent manner of information on procurement opportunities including bidding documents. In the context of introduction of the e-GP system, ensure that sufficient resources, both human and financial, are in place and guaranteed for all phases of roll-out of the e-GP system so that a full end-to-end solution is delivered on time. In this context it will be important to ensure capacity building of procurement staff, suppliers and civil society is developed to fully understand the e-GP system. It is also important to ensure that national expertise is grown, to plan, develop and manage the e-GP system to avoid long term over-reliance on external third party providers. The public interface of the e-GP system should be user-friendly and easily interrogated. Ideally, all on-line information should be published in an open and structured machine-readable format.

ESPPRA will need to lead on the preparation of a training strategy for developing the capacity of key actors in public procurement including procuring entities, the private sector (including MSME businesses) and civil society. ESPPRA will also need to prioritise and provide increased leadership on the development of procurement as a profession. ESPPRA and the Ministry of Finance to work together, to identify priority measures to be put into place to facilitate the introduction of a performance measurement system.

### Pillar III Public Procurement Operations and Market Practices

Procuring Entities should conduct needs analysis and market research and ESPPRA should promote the training and capacity building of procuring entities in relation to methods for conducting and assessing needs analysis and market research. Procuring Entities should clearly define their requirements and desired outcomes. They must also ensure that the tender documents include all the essential elements for a good understanding of all the contractual obligations. To assist procuring entities, ESPPRA must finalise and publish standard tender documents and contract conditions for mandatory use by all procuring entities. Procuring entities should include sustainability criteria in both specified requirements and criteria for evaluation of tenders, and in contract provisions, as appropriate, to ensure value for money. They should also consider using a pre-qualification phase for complex procurements. The choice of this possibility should be made in line with the needs analysis and market studies referred to above. Compliance verification mechanisms should be strengthened to ensure that the choice of procurement method is clearly documented in every case and complies with the legislation. It will also be helpful to introduce measures to ensure that appropriate techniques for a particular procurement are selected and applied to determine best value for money.



As already noted under Pillar 1, the publication of contract awards in a single national location is recommended for transparency and to allow for effective procurement monitoring. It is essential to introduce measures to ensure that procurement records are retained in accordance with the legislative framework and are kept in a single, physical or electronic procurement file. This includes records of the entire contract execution phase. The introduction of the e-GP system should go some way to assist but interim measures must be prioritised. The application of quality control and final acceptance measures should be monitored. Payment deadlines for invoices issued by suppliers to procuring entities must be maintained and monitored. The planned implementation of the IFMIS may contribute to addressing these gaps. It is recommended that current provisions and processes for contract amendments are reviewed, to ensure fitness for purpose and consideration is given to additional measures to ensure better compliance.

#### Pillar IV – Accountability, Integrity and Transparency of the Public Procurement System

In order to promote participation of civil society, a comprehensive and ongoing training programme to build the capacity of civil society needs to be prepared and delivered. This should ensure that civil society understands the public procurement regime, practice and the e-GP system, to facilitate the monitoring of public procurement activity. The legal/regulatory and policy framework should be amended to include provisions to allow citizens to participate in phases of the procurement process in order to encourage citizen involvement and enhance competition, transparency and accountability, in particular. A combination of measures is required to ensure that the procurement system in Eswatini provides adequate disclosure to ensure that stakeholders have meaningful understanding for effective participation in the system to enhance both integrity and competition. Such measures include: ensuring publication of procurement opportunities and contract awards in a single location; publication and mandatory use of the same suite of standard tender and contract documents by all procuring entities, and; collection and publication of reliable national data on procurement activities.

To improve internal control mechanisms and practices, it is important that all procuring entities have relevant and up to date standard operating procedures and internal control manuals in place. In order to ensure that procuring entities have relevant models available, replace or update instructions, regulations and manuals to be applied by procuring entities to ensure that they are consistent with the current audit and controls framework and provide for appropriate balance between efficiency of decision making and risk mitigation. The Audit Committee should be established and become operational as soon as possible. High level policy and decision making is required to ensure sufficient independence and resourcing of the Office of the Auditor General. To start to remedy systemic weaknesses, it is recommended to put into place measures to ensure effectiveness of mechanisms for review and determination of actions in response to reports of the Auditor General and for follow up and implementation of findings of both internal and external audit recommendations. It is advised to consider adoption of written standards and procedures specifically focused on the conduct of both compliance and performance procurement audits. Audit authorities and ESPRA will need to better co-ordinate their audit activities to avoid overlap. This may be considered as part of implementation of the new Combined Assurance Framework, which should be prioritised to enhance inter-institutional cooperation and reporting lines.

It is necessary to consider ways in which to streamline appeals to the Independent Review Committee (IRC), to both speed up the process and also, potentially, reduce costs to parties of legal representation in



oral hearings. Sufficient resources and funding need to be allocated to ensure that the functions and activities of the IRC are appropriately supported.

Turning to ethics and anti-corruption measures, the Government needs to coordinate review and implementation of revised or new anti-corruption legislation including implementing recommendations of UNODC and ensuring alignment between revised provisions in POCA/anti-corruption framework and the procurement legal/regulatory framework. As part of that review it should also consider improvement to the system for collection and publication of comprehensive evidence and data on prosecution, enforcement and application of penalties including in procurement related matters. Another important consideration is to consider how to improve public confidence in reporting channels and improve whistle blower protection.

It is recommended to include provisions in the legal/regulatory framework requiring incorporation of specified definitions and provisions on prohibited practices in procurement and contract documents. Updating is required at legislative, regulatory, institutional and implementation level to create a coherent and effective framework. Co-ordinated efforts are necessary to create a reliable and fully resourced mechanism for identification and mitigation of public procurement related corruption together with improved reporting lines. To strengthen the system, provide regular ethics and integrity training programmes, mandatory for all staff conducting procurement at all types of procuring entities, developed and delivered by a multi-disciplinary team. Also, actively encourage and support strong and credible civil society organisations to exercise meaningful social audit and control in public procurement as well as supply side measures to increase focus on integrity in public procurement. Available public data should be improved, to ensure regular annual publication of corruption related statistics and procurement statistics and establishment and operation of the Register of Tender Defaulters.

There should be a public procurement code of conduct of universal application to officials in all types of procuring entities to include conflicts of interest and financial disclosure and a system of universal application to ensure consistent provision and filing of conflict of interest statements, financial disclosure forms and also information on beneficial ownership.

## 5. Strategic Planning

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This MAPS Assessment, including recommendations, may be used by the Government of Eswatini to inform preparation of a comprehensive action plan for reform and improvements in the public procurement system and a supporting road map for implementation in the short, medium and long term.

The findings of this MAPS Assessment are anticipated to provide an opportunity for the Government of Eswatini and collaborating development partners to explore potential methods of supporting implementation of the proposed action plan.

The order in which the proposed enhancements should be executed to address Gaps identified by the MAPS Assessment is at the discretion of the Government of Eswatini. In the table below, the Assessment Team has identified proposed priority actions for the Government of Eswatini to consider, encompassing a mix of short term achievable goals and medium to long-term undertakings.





	Proposed action	Timeline	Responsible institutions
1.	<p><b>Publish standard procurement documents (standard tender documents including contract conditions, anti-corruption provisions and payment clauses) for mandatory use</b></p> <p>Finalise and publish: (1) a set of standard tender documents with mandatory clauses, and (2) standard contract conditions including payment provisions; and mandate their use by all procuring entities (Central government, local government and category A parastatals).</p> <p><i>See full recommendation at Indicator 2</i></p>	Short term	<p>ESPPRA: to finalise and publish standard procurement documents (tender documents and contract conditions)</p> <p>ESPPRA and MoF: to work together to provide clear messaging and improve coherence of the system by ensuring compliance by all procuring entities</p>
2.	<p><b>Publish contract opportunities at one on-line location</b></p> <p>Mandate and enforce publication of notices for contract opportunities on-line at a single location and free of charge, pending roll out of e-GP.</p> <p><i>See full recommendations at Indicators 5 and 7</i></p>	Short term	ESPPRA and MoF: to work together to provide clear messaging and improve coherence of the system by ensuring compliance by all procuring entities
3.	<p><b>Mandate, monitor and enforce obligations to submit procurement data to ESPPRA</b></p> <p>Put into place measures to ensure that all procuring entities submit information and reports to the ESPPRA in accordance with their statutory obligations and timescales</p>	Short term	ESPPRA and MoF: to work together to provide clear messaging and improve coherence of the system by ensuring compliance by all procuring entities
4.	<p><b>Consider and introduce enhanced measures to reduce reliance on use of less competitive and non-competitive procurement methods</b></p> <p><i>See full recommendations at Indicator 4</i></p>	Short to medium term	ESPPRA
5.	<p><b>Consider raising the financial thresholds for approvals by the controlling officer or Chief Executive,</b> subject to proper operation of appropriate safeguards to ensure transparency and accountability</p>	Short to medium term	ESPPRA



6.	<b>Update procurement legal framework to better align with introduction and operation of the e-GP system</b> See full recommendations at Indicators 1 and 7	Medium term	ESPPRA, Ministry of Finance and e-GP system teams
7.	<b>Start work on development of Sustainable Public Procurement policy/strategy and implementation plan</b> See full recommendation at Indicator 3	Medium to long term	Ministry of Finance and ESPPRA
8.	<b>Capacity building for suppliers and civil society</b> Implement measures to support practical skills based capacity building to increase organizational and technical capacity of: (1) suppliers, in particular MSMEs, to participate in the public procurement market; and (2) civil society to understand, monitor and improve public procurement and to act as a safeguard against inefficient and ineffective use of public resources.  See full recommendations at Indicators 10 & 11	Short to medium term	ESPPRA
9.	<b>Institutional review</b> Start work on implementing a critical review to map operation and assess impact of two parallel systems, & identify ways to remove institutional overlap, do away with silos and improve efficiency. Also consider current activities of Government Central Stores, and future requirements for consolidated procurement of common use or specialised items, framework agreements and e-procurement solutions. Consider also management of complex procurement including PPPs. The review will need to be framed in the context of the impact of the introduction, roll-out and operation of the new end-to-end e-GP system.  See full recommendations at Indicator 5.	Short term	Ministry of Finance with ESPPRA and external expert support
10.	<b>Professionalisation of procurement</b> To enhance efficiency and procurement outcomes and aid effective roll out of the e-GP system, prepare and implement a professionalisation strategy to enhance procurement as a profession and to address issues including necessary procurement structures, career progression, professional support, training and other development needs. The strategy should acknowledge and address the needs of all types of procuring entities and	Short to medium term	ESPPRA and inter-institutional



	aim to present a joined-up approach for the whole procurement system.  See full recommendations at Indicator 8		
11.	<b>Conflict of interest, financial disclosure and beneficial ownership</b> Introduce a system of universal application to ensure consistent provision and filing of conflict of interest statements, financial disclosure forms and also information on beneficial ownership.  See full recommendations at Indicator 14.	Short to medium term	Government and inter-institutional including MoF and ESPPRA.

## 6. Validation

A Validation Mission was conducted in Eswatini in the week of 5 to 9 February 2024. The Validation Workshop was held on Thursday 8 February 2024. In addition to meetings with the Ministry of Finance, ESPPRA and the Assessment Steering Committee, the MAPS Assessment Team used the days prior to the Validation Workshop for additional stakeholder engagement. The MAPS Assessment Team was able to visit and conduct discussions, for the first time, with two additional institutional stakeholders: the Office of the Accountant General and Central Government Stores and also met twice with the Ministry of Public Works and Transport, a key procuring entity.

In addition, the MAPS Assessment Team had lively and informative workshop clarification and validation sessions with CSOs & MSMEs and with local government officials involved in public procurement. All of these events and meetings provided an opportunity to present some initial findings based on the MAPS methodology and further explore issues, raise clarifications and receive additional information and validation of findings. The MAPS Assessment Team subsequently met virtually with Business Eswatini to follow up on previous discussions.

The Validation Workshop was held in Ezulwini on the morning of Thursday 8 February 2024 with Ministry of Finance and ESPPRA both represented. The Validation Workshop was attended by 50 plus participants including from Ministries, local government, Category A parastatals, audit, Anti-Corruption Commission, education providers and the media. (see Annex 4 for list of organisations represented at the Validation Workshop). During the Workshop the MAPs Assessment Team: informed the key stakeholders of activities undertaken by the MAPS Assessment team in the period May 2023 to February 2024; presented the key stakeholders with some of the initial findings based on the MAPS Methodology; and discussed directly with the stakeholders a range of issues requiring further clarification and validation.

The draft final version of the full Report and Matrix was shared with the Ministry of Finance, ESPPRA, and Peer Reviewers from the African Development Bank and World Bank on 15 April 2024 for final comments and quality assurance purposes. Written comments and proposed amendments were received from all parties by 01 May 2024. The MAPS Assessment Team reviewed all of the comments and amendments received and met to discuss and agree revisions and changes. A final version of the full Report and Matrix



with Annexes was finalized through the AfDB's quality assurance process and subsequently submitted to the MAPS Secretariat for external quality assurance on 6 May 2024. External quality assurance comments were received from the MAPS Secretariat and ATAG (Assessment Technical Advisory Group) on 23 July 2024, with ATAG providing non-objection contingent on comments being addressed. In early August 2024, the MAPS Assessment Team responses were submitted to the MAPS Secretariat.



# Annexes/Appendices

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VOLUME II      Matrix – Full analysis of all indicators by criteria with gaps and recommendations

Annex 1	Concept Note
Annex 2	Private Sector Surveys -forms/questions
Annex 3	Assessment Steering Committee – membership, meetings and updates
Annex 4	Validation Workshop – list of organisations represented
Annex 5	List of resources

