



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF MONTSERRAT'S PUBLIC PROCUREMENT SYSTEM

2019



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Acronyms

CARICOM: Caribbean Community

CDB: Caribbean Development Bank

CFWU: Counter Fraud and Whistleblowing Unit

COMES 5: Council of Ministers of Environmental Sustainability

DFID: Department for International Development

ECCB: Eastern Caribbean Central Bank

ECCU: Eastern Caribbean Currency Union

ECD: Early Childhood Development

EDF: European Development Fund

EU: European Union

FCO: Foreign & Commonwealth Office

ICT: Information and Communication Technology

MCAP: Movement for Change and Prosperity

MDC: Montserrat Development Corporation

OCTs: Overseas Countries and Territories

ODA: Official Development Assistance

OECS: Organization of Eastern Caribbean States

OTs: Overseas Territories

PDM: People's Democratic Movement

RMPF: Royal Montserrat Police Force

SAI: Supreme Audit Institution

SDGs: Sustainable Development Goals

UNICEF: United Nations Children's Fund

XCD: Eastern Caribbean Dollars

Executive summary

Overall, Montserrat has a relatively well-developed public procurement system that largely achieves value for money for its citizens, notably taking into account the state's context and in comparison with similar states in the region. Montserrat is the only state in this joint assessment of five Eastern-Caribbean states that uses e-procurement. Challenges relate to more advanced aspects of strategic public procurement and the accountability system. As Montserrat is a self-governing British Overseas Territory, all procurement implementation and legislation is under Montserrat's own purview.

Pillar I

Montserrat's legal and regulatory framework for public procurement is relatively complete regarding specifications for the majority of the MAPS requirements. Gaps relate to details of the public procurement process that remain without regulation; most importantly, contract administration and electronic procurement. Supporting tools, such as templates, standard contract condition and model documents are used but not publicly available. In its current state, the legal and regulatory framework does not make consideration of PPPs, concessions and sustainable procurement.

Pillar II

Overall, procurement institutions in Montserrat are clearly defined and structured. Montserrat has undertaken the first steps towards implementing e-procurement, using a set of basic functionalities along the procurement cycle. Montserrat is the most advanced state among this joint MAPS assessment of five jurisdictions covered as part of this assessment in the region. Procurement officers in Montserrat have participated in CIPS training.

A major gap relates to the absence of a clear link between financial management and the procurement process. Some aspects of the institutional framework for public procurement could be revised in order to strengthen checks and balances. In addition, structured data management and performance monitoring could provide benefits.

Pillar III

The largest and most complex procurement processes in Montserrat are carried out by the Public Procurement Board. These are carried out with documents that are in general well integrated and clearly specify evaluation criteria, requirements and intended outcomes. Some of these are carried out in the myTenders e-Procurement platform, although bids are also accepted in paper. Procurement done under the Procurement Unit generally achieves its objectives. Some gaps were identified related to planning, participation of external stakeholders and contract management, but none constitute red flags.

Keeping in mind its characteristics and challenges as a small island (both population- and demand-wise), Montserrat's procurement market is functional, especially in regard to the suppliers' perception of and access to the public procurement market. Gaps persist because of the lack of dialogue mechanisms with the private sector, the fact that there are no programmes to build capacities among suppliers, and the absence of strategies for key sectors.

Pillar IV

Publically available information about procurement processes is scarce, except for processes carried out in the myTenders platform. The small population of Montserrat allows for direct interaction between citizens and officials; however, actual engagement of citizens with the public procurement system remains generally low. Montserrat has functioning control and audit systems and an administrative and a judicial appeals mechanism. There are also provisions on prohibited practices in its procurement documents.

Gaps in the control and audit system relate to follow-up mechanisms, written audit procedures, and the legal implementation of the audit and risk committee. Gaps in the appeals mechanisms relate to

timeframes for decisions and the way members are appointed to the Complaints Commission. Suppliers perceive the administrative mechanism as biased. Gaps were identified for several areas of the anti-corruption framework, including a lack of a complete anti-corruption framework and the absence of mechanisms for reporting prohibited practices. In addition, the Integrity Commission is not operating.

1. Introduction

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

The recently revised Methodology for Assessing Procurement Systems (MAPS) provides a holistic assessment framework by establishing the criteria of an effective and efficient procurement system that countries should strive to achieve. Like the Sustainable Development Goals, MAPS is relevant for all countries, irrespective of income level or development status. This report details the findings of an assessment of the public procurement system in Montserrat, using the new MAPS (2018). The assessment was led by the Ministry of Finance and Economic Management, with support by the Caribbean Development Bank (CDB) and implemented by the Organisation for Economic Cooperation and Development (OECD), with expert peer review from the CARICOM Secretariat, CDB, the UK Department for International Development (DFID) and the World Bank, who form the Technical Advisory Group (ITAG) for the project.

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

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

2. Analysis of Country Context

2.1. Political, economic and geostrategic situation of the country

Montserrat is a United Kingdom Overseas Territory (OT) in the Caribbean. It is a volcanic island with an area of 102km² and a population of 5,204 inhabitants based on the latest United Nations estimates.¹

Between 1995 and 2013, Montserrat suffered volcanic eruptions from the Soufrière Hills volcano. For this reason, part of the island – known as the “Exclusion Zone”- has become uninhabitable and its population has declined because of the evacuations including the voluntary programme introduced in 1997. Those eruptions devastated the south of the island and buried the capital, Plymouth. Thus, the largest city and its *de facto* capital is Brades Estate (usually called Brades) and the new capital, located in Little Bay Town, which is being built with the support of the British government and the European Union.

The main economic activities used to be tourism and agriculture. However, the damage caused by hurricane Hugo (1989) and the continued volcanic activity affected the economy and caused Montserrat to become dependent on international aid, especially British and Canadian. The greatest sources of employment are construction and public services such as healthcare, education and administration. In fact, the government of Montserrat employs about 40% of the workforce directly.²

The currency of Montserrat is the Eastern Caribbean dollar (XCD), issued by the Eastern Caribbean Central Bank (ECCB). There are few internal suppliers, and most of the goods have to be imported including machinery and transportation equipment, food, and manufactured goods. The island's operating budget is by the most part financed by the Department for International Development (DFID) of the United Kingdom and the total budget allocation for the fiscal year 2018-19 is XCD 164.8 million.³ One of the most important government projects is the Port Development Project, with the objective of providing a safe harbour with broad access to all users, such as cargo vessels, ferries, cruise ships, yachts and fishing boats, among others. This project is supported by the Caribbean Development Bank (CDB), under the UK Caribbean Infrastructure Partnership Fund. Correspondingly, the largest budget categories are Economic Infrastructure development (XCD16.52 million, 49.14% of the total), and Social Infrastructure development (XCD14.65 million, 43.58%).⁴

The political system of Montserrat is a parliamentary democracy, a constitutional monarchy and a self-governing OT of the United Kingdom. Its new constitution was adopted in 2011. The Governor represents Her Majesty the Queen as Head of State (His Excellency Andrew John Pearce) and the local government is headed by a Premier (Hon. Donaldson Romeo) chosen from nine locally elected

¹ <http://www.worldometers.info/world-population/montserrat-population/>

² Government of Montserrat, Caribbean Development Bank, Halcrow Group Limited (2012). Final Report. Montserrat survey of living conditions. http://www.caribank.org/uploads/2012/05/Montserrat-2009-vol-1_v7.pdf

³ Department for International Development <https://www.gov.uk/government/organisations/department-for-international-development> (accessed 23 July 2018)

⁴ Budget Statement 2018-2019. Honourable Premier Donaldson Romeo. 23 April 2018

legislators. Also, the executive branch is composed by a Cabinet of four ministers (Finance, Economic Development, Tourism & Culture; Communications, Works, & Labour; Education, Health, Community Services, Sports & Youth; and Agriculture, Lands, Housing, Environment & Ecclesiastical Affairs) led by the Premier and presided by the Governor.⁵

The legislative branch is composed of a unicameral body represented by the Legislative Council composed of eleven seats: nine members popularly elected to serve five-years terms, the attorney general and the financial secretary as ex officio members. The elections are carried out every five years. The last one was held on 11 September 2014 and the winning parties were the People's Democratic Movement (PDM) with seven chairs and the Movement for Change and Prosperity (MCAP) with two chairs.⁶

Montserrat's judicial branch is administered by one domestic court, named the Magistrates Court, which has jurisdiction over minor criminal and civil cases; and the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court of Justice. There is a final right of appeal to the Privy Council in the United Kingdom.

Montserrat does not suffer from the security threats faced by other countries in the region, such as human trafficking, arms trafficking, gun crime or money laundering. It is considered as one of the most secure places in the region and crime and violence have historically been low. Although the last annual report available in the Royal Montserrat Police Force (RMPF) web page is from 2012, the main crimes committed were assault, domestic violence, theft and burglary. The RMPF has a good reputation and the main concern is the operational capacity of the force. According to the latest Strategic Plan (2011-2014), the RMPF requires modernization and reforms to address deficiencies in its operational capacity, although the number of policemen is sufficient to meet the current demand, inter-institutional cooperation should be sought to improve and reduce crime on the island. In addition, there are plans to use CCTV technology to monitor entry and exit points in the exclusion zone.⁷

Regarding corruption, media sources reported problems with the DFID resources used to rebuild the island because of possible misuse of funds by the Montserrat Development Corporation (MDC)⁸. After reports received by its whistleblowing department, DFID sent an auditor and its conclusions led to the suspension of financial support for the MDC due to poor financial governance⁹. Finally, in April 2015 the government of Montserrat decided to close the MDC. In 2016, DFID and the Government of Montserrat, led by the Ministry of Finance, committed to ensuring that the funds received are used only for the purposes intended and are that they not lost through fraud and corruption. Moreover, all

⁵ Government of Montserrat, website: <http://www.gov.ms/ministries-and-departments/> (accessed 23 July 2018)

⁶ Caribbean Elections, website: http://www.caribbeanelections.com/elections/ms_elections.asp (accessed 23 July 2018)

⁷ Royal Montserrat Police Force, website: <http://police.gov.ms/> (accessed 23 July 2018)

⁸ MDC was organisation created to promote economic development in Montserrat in the areas of infrastructure and trade & investment.

⁹ "£400m foreign aid fiasco in paradise: Bribery, kickbacks, YOUR tax money siphoned into pet projects on a tiny Caribbean island - this British worker blew the whistle and paid a devastating price" (2015) website: <http://www.dailymail.co.uk/news/article-3084557/400m-foreign-aid-fiasco-paradise-Bribery-kickbacks-tax-money-siphoned-pet-projects-tiny-Caribbean-island-British-worker-blew-whistle-paid-devastating-price.htm> (accessed 23 July 2018)

suspicious of fraud or corruption must be reported to DFID's Counter Fraud and Whistleblowing Unit (CFWU).

The Government of Montserrat has the objective of increasing access to Early Childhood Development (ECD) opportunities and improving the quality of education. According to UNICEF, there has been considerable advancement of girls in education, such that they now outperform boys in primary and secondary exams and young women dominate postsecondary education.¹⁰

Montserrat is a member of the Organisation of Eastern Caribbean States (OECS), the Caribbean Community (CARICOM), the Eastern Caribbean Currency Union (ECCU) and the CDB. It is not a member of international organisations such as the WTO. This also implies that Montserrat does not ratify international treaties, but a convention can be extended if it is requested.¹¹ For example, Montserrat is bound by UN human rights treaties such as International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Convention against Torture and Convention on the Elimination of Racial Discrimination. In addition, the European Convention on Human Rights applies to Montserrat and individuals can take cases to the European Court of Human Rights if there is no other remedy in Montserrat. Montserrat has also been included in the United Kingdom's ratification of international agreements like the Convention on the Protection of World Cultural and Natural Heritage; Convention on the Conservation of Migratory Species of Wild Animals and Convention on International Trade in Endangered Species of Wild Fauna and Flora.¹²

Finally, there is an important relationship with the European Union (EU) in terms of economic cooperation. According to Article 198 of the Treaty on the Functioning of the EU, the purpose of the association between the EU and the Overseas Countries and Territories (OCTs) is "to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole". Under the 11th European Development Fund (EDF) Montserrat receives €18.4 million for cooperation in the period 2014-2020. The government and the EU have agreed the focus of this cooperation, with the most relevant areas being energy, accessibility, tourism and information and communication technologies (ICT).¹³

¹⁰ UNICEF, website: https://www.unicef.org/easterncaribbean/Montserrat_SitAN_2016_WEB.pdf (accessed 23 July 2018)

¹¹ Foreign and Commonwealth Office (2012), "The Overseas Territories", www.official-documents.gov.uk
Website: <https://www.gov.uk/government/news/uk-stands-by-caribbean-and-overseas-territories> (accessed 23 July 2018)

¹² United Nations Treaty Collections, website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&clang=en (accessed 23 July 2018)

¹³ European Union, website: https://ec.europa.eu/europeaid/regions/overseas-countries-and-territories-octs/programmes_en (accessed 23 July 2018)

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

The Ministry of Finance and Economic Management (MoFEM) oversees the procurement system. The Procurement Department is part of the MoFEM. The department head, the Head of Procurement, is responsible for strategic decisions and operational procurement across government.

The Public Procurement Board (PPB), established by the procurement regulations, is responsible for acquisitions over XCD 50 000 000. The PPB determines the procurement documents, maintains records, recommends amendments to the regulation and suspends and debar suppliers. There are Departmental Tender Committees appointed by the Public Procurement Board to oversee the administration of procurement by the procuring entities for contracts below XCD50 000 000. The Deputy Financial Secretary is the chairperson of the Procurement Board;

The Chamber of Commerce of Montserrat is a key institution in the public procurement system. While there is no formal dialogue system in place, the Chamber of Commerce does represent the private sector and interacts with the public procurement institutions.

The UK Department for International Development (DFID) is a key player in the public procurement system at Montserrat. Projects funded by DFID are ruled by DFID regulations.

The current availability and quality of government statistics does not allow for the calculation of what share which public procurement represent as a part of GDP and as a part of total government expenditures.

2.3. National policy objectives and sustainable development goals

Montserrat is one of three¹⁴ OTs that receives Official Development Assistance (ODA) from the British Government, which is responsible, under the United Nations Charter, for promoting the development and wellbeing of the inhabitants of its OTs. This responsibility includes efforts promoted by DFID to achieve Sustainable Development (SDGs).¹⁵

UK Financial Aid to Montserrat is intended to support the government's self-sufficiency and reduce its financial dependence on aid from the United Kingdom. DFID aid for fiscal year 2018/2019 represents XCD 78.4 million. In addition, it has the goal of promoting better policies and financial management in Montserrat.¹⁶

DFID seeks to support Montserrat to achieve sustainable economic growth and greater financial independence. For instance, the Geothermal Energy Development Project seeks to support the

¹⁴ The others are St Helena and Pitcairn.

¹⁵ Department for International Development, website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723278/DFID-Overseas-Territories-Profile-July-2018.pdf (accessed 23 July 2018)

¹⁶ Department for International Development, website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723278/DFID-Overseas-Territories-Profile-July-2018.pdf (accessed 23 July 2018)

development of geothermal energy in Montserrat, by drilling and exploratory testing of three geothermal wells. This project is in line with the seventh SDG (Affordable and clean energy).¹⁷

Related to the 13th (Climate action) and 14th SDGs (Life below water), Montserrat has an Environmental Management Strategy (NEMS), and a regulatory framework for environmental management that includes the Conservation and Environment Management Act (2014) and the active participation of the Council of Ministers of Environmental Sustainability (COMES). The fifth meeting of COMES took place recently in Montserrat and had as the main topic "Building Resilience on the Frontlines of Climate Change".¹⁸ Correspondingly, DFID has been establishing a data collecting and reporting system for Montserrat to help create long-term sustainable fisheries.

It is worth saying that Montserrat does not have a SDGs report to show its progress, but the ministries monitor those related to education and health. For example, with regard to the 3rd goal (Good health and well-being), the island has had good results in reducing infant mortality, improving maternal health and fighting against HIV/AIDS.

Lastly, Montserrat has a Sustainable Development Plan 2008 - 2020 whose strategic goals are the following:

- “1. Economic Management - An environment that fosters prudent economic management, sustained growth, a diversified economy and the generation of employment opportunities.
2. Human Development - Enhanced human development and improved quality of life of all people on Montserrat.
3. Environmental Management and Disaster Mitigation - Montserrat’s natural resources conserved within a system of environmentally sustainable development and appropriate strategies for disaster mitigation.
4. Governance –An efficient, responsive and accountable system of governance and public service.
5. Population – A sustainable population.”¹⁹

2.4. Public Procurement Reform

Montserrat is part of the regional movement to further public procurement reform, which several neighbouring OECS Caribbean states have already embarked on. In Montserrat, the objective is to follow international, accepted principles of transparency, integrity, value for money, openness, fairness, competition and accountability. In 2012, the “Public Finance (Management and Accountability)(Procurement) Regulations” was issued and is currently in place.²⁰

The latest budget statement (“2017-2018 Budget Statement & Estimates of Revenue & Expenditure and Development Fund”²¹) contains two important references to procurement: (i) staffing resources

¹⁷ Government of Montserrat, website: <http://www.gov.ms/wp-content/uploads/2017/11/Montserrat-Geothermal-Private-Sector-Involvement-Early-Market-Engagement.pdf> (accessed 23 July 2018)

¹⁸ OECS, website: <https://pressroom.oecs.org/montserrat-still-here-still-home-still-nice> (accessed 23 July 2018)

¹⁹ MONTSEERRAT SUSTAINABLE DEVELOPMENT PLAN 2008 – 2020. Ministry of Economic Development and Trade Government of Montserrat (2010)

²⁰ <http://www.gov.ms/wp-content/uploads/2017/03/SRO-No-11-of-2012-Public-Finance-Management-and-Accountability-Procurement-Regulations.pdf>

²¹ <http://finance.gov.ms/wp-content/uploads/2013/06/Budget-2017-20.pdf>

for public procurement and (ii) strategies and indicators related with procurement. The number of procurement staff might appear low (four staff), but the fact that it is referenced in the budget statement shows that the Ministry of Finance is aware of the strategic importance of the procurement function. In addition, the document includes the revision of the procurement regulations as one of the key strategies. Goals are to identify and remove obstacles for doing business with the government, to enhance capacity of stakeholders to understand regulations and to use procurement tools through training and the production of a user guide and a procurement handbook. The performance indicators are the preparation of a procurement handbook and the number of training sessions on procurement held.

In May 2017, the Government of Montserrat proposed some amendments to the 2012 Regulations. The proposed changes aim at ensuring that the international good practices and principles of public procurement are satisfied. The Government of Montserrat reported that they carried out a public consultation of the proposed reform to the legal framework. The consultations were carried out online and through public forums, involving stakeholders from civil society and the private sector. Open discussion of the proposed reform helps to build momentum, gain support for the reform and supports consensual decision making in relation to the approval and implementation of the new legal framework. This proposal has not to date been submitted for approval.

Montserrat is a Small Island Developing State sharing geographical characteristics, legal background, history, and of the market with the Antilles. The different jurisdictions have exchanged experiences in the area of public procurement as part of the Inter-American network on Government Procurement, for example (Montserrat is an observer.) In addition, the Caribbean islands have taken advantage of their similarities to facilitate public procurement following the experience of the OECS Pharmaceutical Procurement Agency.

Another regional initiative to reform public procurement has been taking place on the initiative of CARICOM. The initiative includes a draft procurement protocol and a draft model bill, which – once agreed and implemented – could provide an opportunity to streamline public procurement rules and practices across the region. Specific guidance and tools have been developed to support countries in the region in improving public procurement practices. Representatives of Montserrat have actively participated in capacity building initiatives (such as training) and the negotiations of the draft protocol. A National Advertising Portal was developed for Montserrat. These activities were funded by the Tenth European Development Fund project on the Development and Implementation of the Infrastructure and Instruments for an Integrated CSME Procurement Market.

3. Assessment

3.1. Pillar I – Legal, Regulatory and Policy Framework

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

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

Montserrat's legal and regulatory framework for public procurement covers the essential elements and assigns responsibilities for most tasks. However, gaps relate to details of the public procurement

process that remain without regulation; most importantly, contract administration is not regulated and specifications regarding electronic procurement are missing. Supporting tools, such as templates, standard contract condition and model documents are not publicly available, and no information was found indicating that the legal and regulatory framework makes consideration of how to include principles of sustainable public procurement in public procurement processes.

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

The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents formally in use. It assesses the completeness of the legal framework and how different matters are covered, for example procurement methods, rules of procedure and systems that support procurement process.

The legal framework of Montserrat is relatively complete regarding specifications for the majority of the requirements. Some improvements are called for with regards to details of the procurement cycle, as well as in the area of systems and tools to support procurement. Montserrat's procurement legal framework does not cover rules for contract management and specific regulations for specialized procurement as PPP's, concessions and sustainable procurement.

- **Findings**

The legal framework of Montserrat is hierarchically organised and covers most of the requirements in this indicator. The main elements of the legal and regulatory framework for public procurement are the Public Finance Act of 2008 and the Procurement Regulations of 2012. The 2012 Regulations specify procurement methods and cover goods, services and works.

There is no clear reference to PPP's and concessions. While the specific need for regulating concessions in Montserrat needs to be evaluated, concession contracts provide a useful tool to public authorities. Concessions are used to deliver services or construct infrastructure involving a contractual arrangement between a public authority and an economic operator who provides services or carries out works and is remunerated by being permitted to exploit the work or service. While the feasibility of concessions has to be evaluated in each country context and degrees of use vary, concessions can be an attractive way of carrying out projects in the public interest when state or local authorities need to mobilise private capital and know-how to supplement scarce public resources.

The regulated procurement methods include a range of both competitive and non-competitive situations and in every case; the applicable standards for its use are well specified.

Rules to perform the procurement procedures under every method are clear and cover advertising, participation, submission of proposals, and the content of the procurement methods and awarding criteria. Fractioning of contracts to limit competition is expressly prohibited by section 13(b) of the Procurement Regulations of 2012. The evaluation criteria include a combination of quality and price and there is an effort to include life cycle cost.

The procurement rules require publication and state the conditions for publishing procurement opportunities. There are fair rules on participation and eligibility criteria, and no barriers to participation. SOEs are not subject to the general public procurement regulation. However, the Public

Procurement Board has to approve the rules and regulations for SOEs. In case of a material conflict between the 2012 Regulations and the SOEs regulations, the 2012 Regulations shall prevail²².

Procurement documentation and specifications are satisfactorily covered by the legal and regulatory framework, as are rules for evaluation and award criteria, as well as rules for submission, receipt and opening of tenders.

Appeals and dispute resolution procedures during contract administration are satisfactorily established. The Government of Montserrat stated that there has never been any appeal. Therefore, there is no public data in connection with appeals procedures.

Responsibilities for contract management are not clearly assigned, and there are no rules for contract amendments within the regulations. Rules for contract variations are set in the tender documents or in the contract, according to feedback from the stakeholders.

Rules for safekeeping of records, documents and electronic data exist, but there are no security protocols.

The legal and regulatory framework lacks rules regarding:

- E-procurement
- PPPs and coverage of the procurement principles by specialised legislation

The web page of the government of Montserrat has an access point for tenders in which procurement documents for specific tenders and requests for proposals can be accessed by the public. Documents also include addenda, clarifications, notices, etc. myTenders is a platform that allows Montserrat to (i) publish notices with attached documents; (ii) receive submissions online; (iii) receive and answer questions online; (iv) conduct two stage procurement exercises; (iv) conduct requests for quotations. MyTenders allows to collate data for statistics; however, the assessors did not have access to any information regarding the number of procurement proceedings undertaken online through myTenders and the ones undertaken on paper (see indicator 7.)

The assessors did not identify any reference in the legal and regulatory framework that would establish any requirement to use myTenders for any specific procedures. Documents available on myTenders included varying procedures, such as tender submission electronically in one case and submission in paper using the tender box in another case. The assessors were unable to ascertain the actual coverage of myTenders both with regards to the procurement cycle as well in terms of the share of all procurement procedures.

Although this e-procurement system exists, there is no clarity in the current regulations on who is responsible to plan and manage e-Procurement tools in the legal and regulatory framework. This would be important to continue improving the system and overcome difficulties on records, accessibility, and submission of electronic tenders, among others.

- **Substantive gaps**

Substantive gaps were identified at three different levels: first, related to the scope of the legal framework; secondly, in some procedural specifications; and third, at the contract management level.

A substantive gap regarding the scope of the legal framework is the absence of a specific regulation for PPP's, concessions and other forms of acquisition, other than the procurement methods specified in the general legal and regulatory framework. In addition, the scope of the general public

²² Section 19 of 2012 Regulations.

procurement laws and regulations, and most notably the procurement principles, do not extend to specialized matters.

Regarding procedural rules, substantive gaps were identified with regards to:

- (i) the absence of a specific rule to set a minimum time frame between call for and submission of proposals;
- (ii) the lack of procedures and mechanisms to ensure safety and confidentiality of the proposals: since there are no standards for their treatment once they are submitted by the tenderer, those standards are not defined for electronic records either;
- (iii) in terms of dispute resolution, the absence of a clear right to demand judicial review over decisions of the administrative appeals body;
- (iv) absence of rules regarding SOE participation in the procurement process.

Finally, a major gap was identified in the rules for contract management. The legal framework does not include procedures and responsibilities to follow up on contract performance. This implies a risk of non-performance or under-performance of the contracts, which ultimately represents a failure of the process. The lack of general rules on contract amendments or renegotiations is a major gap because ex-post contract renegotiations are a major corruption risk.

The procurement regulations are currently being revised to address some of the above-mentioned issues. The proposed amendments are (i) to review and simplify the thresholds; (ii) change the process for opening and announcing bids; (iii) improve procedures to guarantee equal treatment; (iv) publish a spreadsheet with all awarded contracts at the web page of the Government of Montserrat; (v) Procurement Board composition; (vi) abolish the Departmental Bid Committee because bearing in mind the size of Montserrat the Procurement Board can be in charge of such duties; (vii) emphasis in e-procurement; (viii) contract management; (ix) appeal process.

- **Recommendations**

Once in place, the revised regulations will solve many of the gaps highlighted above; therefore, the recommendation is to continue the process to update the regulations and take advantage of the MAPS exercise by incorporating the recommendations from this assessment.

One of the points to be addressed is to develop necessary provisions in the legal and regulatory framework to regulate the use of e-procurement in Montserrat. While e-procurement is de facto used, there is a lack of rules about this use. In developing these rules, Montserrat should evaluate what scope is in fact needed for these rules, as for all legal and regulatory updates. In conducting such an evaluation, examples of such regulations in other jurisdictions (in the region and beyond) should be evaluated.

Montserrat could consider conducting a review on the needs to regulate PPP's and concessions. In addition, the government could evaluate how rules for specialised cases of procurement, such as procurement by statutory bodies, could be clarified in the legal and regulatory framework. Two approaches are followed by many countries: specialised procurement is either covered through pieces of specialized regulation that need to be aligned with the principles of public procurement, or by bringing such procurement under the coverage of the wider public procurement legal and regulatory framework.

In terms of rules of procedure, two kinds of actions could be completed: (i) legal and regulatory changes, and (ii) needs assessment and system development planning.

The legal and regulatory framework could be updated to include a rule to establish the minimum time frame between the call for proposals and bid submission. This rule could set the lowest standard and allow a longer time frame in particular cases, but it will guarantee the basis for equal treatment in all

cases. Other regulatory changes could include the design of security procedures in procurement, both at a physical and electronic level to protect from hacking, phishing or any other security challenge.

With regards to the latter, needs assessments and system development planning, an analysis could identify the changes that can support the more systematic approach to determine the best solution for the context of Montserrat.

Finally, it would be very important to regulate contract management responsibilities, procedures to follow up on contract performance and rules for contract amendments. The current legal framework does not include clear mandates regarding this very important phase of procurement, so regulations should be developed and implemented to ensure value for money throughout the entire procurement cycle, including in contract management.

In addressing these topics, Montserrat could draw on existing guidance that has been developed in the region, for example as developed by CARICOM as part of the 10th European Development Fund project on public procurement. Relevant elements include the National Advertising Portal and manual and could serve as starting point or input for developing specific tools for Montserrat.

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

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

In Montserrat, implementing regulations complement the legal framework, but supporting tools are not publically available.

- **Findings**

Regulations are clearly defined and do not contradict the rules specified in the law. Most of the applicable rules are defined at a regulatory level. Responsibility for maintenance is clearly established, but regulations are not consolidated and accessible publically in one place.

The regulations at section 16(1)(d) state that the Procurement Board, with support from the Procurement Unit in the Ministry of Finance, is tasked with developing documents for procurement, including templates, procurement manuals, guidelines and procedures. That means in practice that the Procurement Unit is responsible to develop such tools. The Government of Montserrat stated that there are some model procurement documents for goods, works and services and standard contract conditions. The documents are not publicly available on the web page of the MoFEM.

There is no evidence of the existence of a user's guide or procurement manual. However, according to the government, Procurement Operating Procedures (POP) are currently being developed that further specify the procedures to be followed.

- **Substantive gaps**

Three substantive gaps were identified: First, the lack of easy access to regulations creates uncertainty about the proper process for public procurement and prevents the establishment of a level playing field. There is a legislation point at the MoFEM web page but it does not have the 2012 Regulations. According to MAPS indicator framework, easy access means that the rules governing public procurement are available to the public in a single accessible place, structured or searchable so that users can easily identify the entire set of rules that are currently in force.

The assessors had access to (i) general conditions of a public works contract, (ii) a "typical" contract for services that has been used as a template, and (iii) a form to declare conflict of interest as well as procurement documents for previous cases (invitation to tender for the tourism strategy for

Montserrat; request for proposals for the installation, operation and maintenance of the Montserrat submarine fibre optic cable project.) The assessors were unable to verify the existence of other standard documents, templates and forms. Regulations define that the Procurement Board is responsible to develop standard bidding documents, prequalification documents, procurement contracts, anti-collusion statements, evaluation forms, procurement manuals, guidelines and procedures. Standard operating procedures are currently under preparation.

The absence of these documents results in large discretion and therefore uncertainty in the public procurement process. In addition, the repeated creation of procurement documents and contracts requires time and creates inefficiencies.

The third gap relates to the absence of a procurement manual to guide and support procurers' work.

- **Recommendations**

Montserrat could consider publishing the entire legal and regulatory framework in an easily accessible web portal, allowing interested parties to access and review it at their leisure. To facilitate access, such a portal could be linked to and from myTenders.

The Procurement Board should draft all the documents listed in section 16.1.(d) of 2012 Regulations to support the work of procurement officers, including the procurement manual. In addressing these topics, Montserrat could draw on existing guidance that has been developed in the region, for example as developed by CARICOM as part of the 10th European Development Fund project on public procurement. Relevant elements that could serve as an input include standard bidding documents and procurement standard operating procedures.

In addition, the Procurement Board could publish the existing templates and draft a procurement manual. The development of these documents should be based on a needs assessment and a plan to prioritise the development of the different documents. In addition, these documents should be published and kept up to date.

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

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

- **Findings**

Section 33.7 of 2012 Regulations states that in determining the lowest evaluated tender, the Public Procurement Board shall bear in mind, to the extent that it is practical, the countertrade arrangements offered by suppliers. Montserrat's Sustainable Development Plan 2008-2020 mentions procurement skills as one necessary skill that is required for successful implementation. No other mentions of procurement in the development plan were found.

- **Substantive gaps**

No reference to a Sustainable Procurement Policy or to the obligations derived from international agreements related to the Montserrat Procurement System was found, which represents a substantive gap. Such obligations relate to equal treatment, non-discrimination and participation of suppliers under equal conditions.

- **Recommendations**

Montserrat is recommended to develop a sustainable procurement policy and include a reference to SPP in the legal framework.

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.

Overall, procurement institutions in Montserrat are clearly defined and structured, with some gaps related to their independence. Substantive gaps were found in this pillar. A major gap relates to the absence of a clear link between financial management and the procurement process. Appropriation and certification of expenses is not necessary in accordance with the legal and regulatory framework and there is no requirement to compile procurement plans. While Montserrat has undertaken the first steps towards implementing e-procurement, functionalities remain limited and the implementation of structured data management could provide benefits. There is limited capacity of the public procurement system to develop and improve itself. As stated in the 2017-2018 Budget Statement, resources for procurement staffing are not sufficient. There are no statistics and indicators on this matter to support improvements.

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

This indicator focuses on how well integrated the procurement system is with the public financial management system. The sub-indicators assess the direct interaction between the procurement system and the financial management system, including budget and planning, treasury and contract performance, payments and fulfilment of contract obligations.

Montserrat's financial management and procurement planning, as described by Montserrat's rules, are not well integrated. Both matters are regulated, but no specific rules, different than the general rules applicable for the financial management, are in place to regulate procurement. As a consequence, there are no financial procedures defined in the procurement process, for example, no procurement plan needs to be prepared by the procuring entities and there is no clear appropriation process for acquisitions.

• Findings

There are no specific rules for financial planning and budgetary expenses related to public procurement. Expenditure is regulated by general rules that do not consider the particular stages and requirements of a procurement process. In the context of MAPS, a procurement plan is considered an annually prepared document, which defines the goods, works and services that a procurement entity will purchase from external suppliers during a given year, when and where it will procure and the procurement method to be used. The procurement plan shall be aligned with the approved budget and the available cash flow and can be revised and edited with new projects or needs or excluding planned acquisitions. The procurement plans are published and made available to the public in light of fairness and transparency.

The assessment team received a template of a procurement plan as well as an example of how the Ministry of Education used this template to plan procurement. This procurement plan was not published, and it did not contain specific budgets.

At the level of the procurement process, there are no clear financial requirements either. There is no specific provision that would require preparing procurement plans. The Public Finance Management and Accountability Act (2008) contains an obligation to prepare annual expense estimates, but there is no requirement for a detailed procurement plan.

In addition, there is no specific provision for expenditure appropriation related to procurement processes. The Public Finance Management and Accountability Act 2008 determines that expenditure

must be in accordance with planning and authorizations to pay, but it contains no details regarding procurement processes.

There is no specific obligation to certificate the availability of funds before starting the procurement process.

There is no specific procedure for processing procurement invoices nor for the authorisation of payments in the procurement process.

- **Substantive gaps**

The substantive gaps identified in this indicator are related to the absence of procurement planning and financial management procedures in the procurement process. In the first place, there are no general rules relating procurement activity to financial planning of the Government of Montserrat; in addition, procurement planning is not conducted on an annual basis. The procurement procedures do not include financial procedures or principles.

No information was available to assess the quantitative assessment criterion (invoices paid on time.)

- **Recommendations**

The main recommendation in this indicator is to define procedures to harmonise the procurement rules and the budget and expenditure regulations. This is important to ensure that budget and cash flows exist to honour procurement obligations in accordance with the terms of every procurement document – before these obligations are entered into. Other procedures could be developed, for example a yearly procurement plan and tools to report its execution.

The existence of general accounting rules is not enough to integrate the financial management system and the procurement system. The indicator requires an integration of resources with identified needs, as well as integrating financial analysis with the costs and opportunities to satisfy such needs. It is also important to analyse what implications procurements have on budgets, cash flows and the government's overall financial obligations, and how this interaction impacts risks of delays in payments and delivery.

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.

Montserrat has an organisational structure to address the normative and regulatory function for public procurement. Most of the responsibilities that are subject to assessment according to the second sub-indicator are covered by the functions of the procurement entity and the Departmental Procurement Board. However, gaps were found in relation to responsibilities to maintain an information system and undertake data analysis.

- **Findings**

The Procurement Board, supported by the Procurement Unit, is the entity responsible for normative and regulatory function for public procurement in Montserrat; the Governor's Council is entitled to adopt regulations. The Procurement Board is chaired by the Deputy Financial Secretary, and has the following additional members, according to the government:

- Two non-government members
- One legal representative
- One technical expert
- Observer: donor agency, non-voting

The Procurement Board was created by the 2012 Regulations and its functions are included in these regulations. Most responsibilities are clearly assigned to the Procurement Board, such as the responsibility for adopting measures to carry out the provisions of the 2012 Regulations, recommending amendments to the 2012 Regulations to improve the effectiveness of the procurement process, reporting periodically, reviewing decisions of procuring entities upon request and determining forms, tools and instruments.

According to the government, the division of labour between the Procurement Board and the Procurement Unit are as follows:

Procurement Board	Procurement Unit
<ul style="list-style-type: none"> • Administers tenders valued above XCD 100,000 • Sets guidelines and agrees standard bidding documents • Responsible for tender evaluations 	<ul style="list-style-type: none"> • Develops and approves tender documentation with the procuring entity • Manages the tender process • Maintains standard documentation • Monitors procurement processes across the government

The Procurement Board is sufficiently staffed and has a high standing in government. Several gaps relate to the absence of attribution of certain responsibilities in the law and a system to manage conflict of interest.

- **Substantive gaps**

A substantive gap relates to the existence of an *institutional* conflict of interests of the Procurement Board: The Procurement Board has responsibilities to both oversee tenders and to prepare regulations, which means that it might ultimately regulate itself. Without adequate measures to hedge for a conflict of interest materialising, this arrangement is problematic. In addition, the financing of the Procurement Board is not specified in the legislation. According to stakeholders, members of the Procurement Board sign a declaration to confirm the absence of a conflict of interest. This declaration pertains to personal conflict of interest and cannot be considered adequate to address the conflict of interest in an institutional sense that arises from the governance structure in which the Procurement Board is embedded. The responsibilities and powers of the procurement regulator should be separate from the operational management of procurements, including the associated reporting structure.

In addition, gaps relate to the specification of responsibilities that a complete normative and regulatory function should have according to the assessment criteria. The following responsibilities are not defined:

- Providing advice to procuring entities
- Development of an information and analysis system for procurement, including e-Procurement tools.

- **Recommendations**

In general, as mentioned also in indicator 6 below, Montserrat might wish to re-evaluate the institutional set-up with regards to public procurement, working towards a clear definition and separation of responsibilities, while being mindful of the resource implications that such an institutional separation would require.

Montserrat could consider separating the operative from the regulatory functions of the Procurement Board to reduce conflicts of interest. Two separate units within the Board could be tasked with purchasing and the regulatory and normative function, respectively. In separating these functions, attention should be paid to the particular challenges with regards to resources and capacity in Montserrat. An assessment of the current distribution of responsibilities and potential avenues for avoiding a conflict of interest might inform the reforms.

Additional responsibilities that are currently not defined should be attributed, possibly as part of the process to review an institutional conflict of interest between operational functions and the normative and regulatory functions.

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

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

Procuring entities are defined, especially the Procurement Board that has procuring responsibilities (in addition to the normative and regulatory function specified above). In terms of the existence of a centralised procurement body, there is no evidence of demand aggregation.

- **Findings**

The legal and regulatory framework clearly defines what kind of entities can conduct procurement activities, and applicable procedures. The Procurement Board (also entrusted with the majority of normative and regulatory functions, see indicator 5) is tasked with supervising public procurement above a threshold of XCD 100,000, with operational support from the Procurement Unit. The Procurement Unit handles most of the procurement process, such as documentation and management. However, the evaluation is responsibility of the Procurement Board.

Contracting entities in other government institutions are tasked with conducting procurement below the threshold and can establish Public Procurement Commissions in case necessary.

- **Substantive gaps**

While the Procurement Board to a certain extent represents a procurement function in the central government, it is only authorised to conduct high value procurement processes on behalf of other institutions, without any aggregation. There was no indication that any consideration with regards to aggregation of demand was made, and none of the aspects of a centralised procurement body as defined by sub-indicator 6(b) have been enshrined in the legal or regulatory framework.

There is no information about the number of procuring entities in Montserrat.

- **Recommendations**

Overall, recommendations centre on the need for a re-evaluation of the basic institutional structures tasked with responsibilities related to public procurement, ensuring a clear attribution and division of responsibilities:

Montserrat could institutionalise a centralised procurement system for goods, works and services to aggregate demand among Montserrat's procuring entities. Aggregating demand can translate into savings for all government entities. Higher purchasing volumes can facilitate realisation of economies of scale. Priority could be given to items that are easy to standardise and are procured repeatedly by several procuring entities. This process towards centralisation could also take into account the above-mentioned institutional conflict of interest and emphasising the operational tasks vis-a-vis the regulatory and normative tasks. A policy clarifying rules and procedures for any centralised and aggregated purchasing, as well as institutional requirements should be clarified.

In addition, the Government of Montserrat could define an accountability policy for procuring entities, and particularly the Procurement Board. In doing so, consideration has to be given to the relatively small government of Montserrat, and measures should be practical and not establishing overly large burden in comparison with the risk. At the same time, clear accountability procedures can strengthen the confidence of citizens and suppliers in Montserrat's public institutions and can ensure that value for money is guaranteed. Adopting these changes could be part of a process to define the normative / regulatory function and the operative function in the area of public procurement.

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 support the different stages of the public procurement process efficiently through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

This indicator considers the existing functionalities that are available to conduct procurement electronically. Montserrat uses some elements of information technology to support procurement in the form of the myTenders portal. Montserrat is the most advanced state among this joint MAPS assessment of five jurisdictions in the region. However, there is no data management beyond the initial functionalities of myTenders (for example indicators related to the use of each method of procurement, value variations, number of proposals, new suppliers, type of goods, works and services procured, average of time per method, among others).

• Findings

Montserrat uses the e-procurement portal myTenders. The website contains procurement opportunities and notices about awards, but beyond basic elements of the procurement process, the overall e-procurement system used in Montserrat remains limited when compared to the e-procurement functionalities outlined in this MAPS indicator. While MyTenders has the potential to collect some data related to tenders, this data is not used in a structured information system or analysed to inform future procurement decisions. The portal does not provide complete information related to the procurement process and the procurement cycle is not completely covered by the functionalities offered in myTenders.

The assessors did not identify any provision in the legal and regulatory framework determining which tenders are mandatory to be conducted through myTenders, as well as what elements of the procurement cycle (see indicator 1). In practice, according to stakeholder interviews, myTenders is used for procurements that have a market beyond Montserrat; for tenders with a local reach, the website of the Government of Montserrat is used.

MyTenders functionalities include bid submission and receipt, as well as a platform to manage clarifications. Actual use of myTenders functionalities seems to vary from tender to tender. For example, an invitation to tender for the procurement of security services for Glendon Hospital offers the option of using myTenders or email for questions and clarifications and the submissions can be through myTenders and in hard copies. This is the case of most of the procurement documents

publicly available, for tenders and for request for proposals. In contrast, an invitation to tender for the renovations of the Dive Shop at Little Bay states that the tender is to be placed in the Tender Box at the Office of the Premier.

In 2018, 35 notices (prior information notices and calls for tender) were published through myTenders. Some of these seem to be repeated notices for the same project. The assessors did not identify any information beyond the notice text as well as limited exchanges with suppliers. The latter related to notification about the outcome of a tender. The most recent exchange was dated in the summer of 2017.

Regarding data or information analysis, the legal framework includes an obligation to gather some data about the procurement process, but does not define clear procedures to analyse that information.

- **Substantive gaps**

While Montserrat is one of the first countries in the region to use an e-procurement system, some features of e-procurement outlined by the MAPS have not been introduced.

The documents available online do not cover the entire cycle of the procurement process, and cannot be easily linked to each other, for example the outcome of an individual invitation to bid, what kind of clarifications to a specific tender have been provided, etc. There is no information published about the progression of a procurement process along the procurement cycle. In addition, it is a substantive gap that there is no defined, responsible agent in charge of developing the information system and responsible for gathering, managing and using procurement data to improve the performance of the procurement system. No strategy has been developed to ensure that the development of the e-procurement system efficiently and effectively meets the needs of contracting authorities in Montserrat.

A considerable gap relates to the procurement information or procurement data gathered by the e-procurement system, and how it is used to inform procurement processes overall. No evidence was found that the information in the e-procurement system is gathered in a structured way and systematically analysed to inform future procurement processes.

Assessors did not have access to information to assess the mandatory quantitative assessment criteria in this indicator, including:

- procurement plans published (in % of total number of required procurement plans)
- key procurement information published along the procurement cycle (in % of total number of contracts)
- invitation to bid (in % of total number of contracts)
- contract awards (purpose, supplier, value, variations/amendments)
- details related to contract implementation (milestones, completion and payment)
- annual procurement statistics
- appeals decisions posted within the time frames specified in the law (in %).

- **Recommendations**

In the context of procurement systems with limited capacity and resources, as is the case in Montserrat, electronic procurement offers great potential to increase the efficiency and effectiveness of the procurement system, without straining available resources. The main recommendation is to define a responsible entity to plan the development of the information system for the procurement process. This should include expanding the functionalities of the system, and most importantly to make the information gathered in the procurement process usable for analysis. This could include an open procurement policy to gather, use and publish information about procurement procedures. The

strategy should also consider how procurement data can be analysed, and identify how this analysis can contribute to increased value for money, as well as the more efficient and effective management of public procurement in Montserrat. In addressing this aspect, Montserrat could draw on the functionalities made available through CARICOM's National Advertising Portal, including supplier registration or e-learning module.

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

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. It evaluates the existence of strategies and programs for development and the professionalization of the activity. The indicator is divided in three sub-indicators. Findings in this indicator relate to the entire public procurement workforce, i.e. all public employees that conduct procurement.

Procurement officers in Montserrat have participated in CIPS training. Several elements proposed in this indicator are absent in Montserrat: public procurement is not considered a profession, and no system to monitor performance in the area of public procurement.

- **Findings**

Several procurement officers have participated in CIPS level 4 training through virtual class room at the University of Jamaica. These activities were funded by CDB. In addition, the Procurement Unit conducts ad hoc training for procurers across government that cover the general needs in the context, using own training material as well as existing material, for example guides for the e-procurement system. In addition, individual performance is evaluated according to general systems in the public sector. Job descriptions outline the profiles of staff in the Procurement Unit. Montserrat does not have a specific training program for procurement officers. The Strategic Plan of the MoFEM does not include performance indicators of the public procurement system. However, analysis is undertaken adhoc at the level of the Procurement Unit.

- **Substantive gaps**

The three main aspects of this indicator are largely absent in Montserrat: There is no structured training programme based on needs, and no system-wide performance monitoring system evaluating the procurement processes. Finally, there is no professionalization of the procurement function, i.e. specific provisions to recognise the procurement activity as specific function are absent, as are evaluation mechanisms for individual officials, a career path focusing on procurement or role descriptions for those conducting procurement.

In the context of this indicator, MAPS refers to a training programme that is linked with a professionalization system and a career path for procurement officers in the different contracting authorities, as well as the systems that are in place to evaluate performance and take appropriate measures to adapt to new challenges.

Montserrat, as a small territory, has an administrative body that is relatively small overall. Any measures to evaluate performance and increase procurement professionalization have to be appropriate to the limited capacity in the country. However, there is a need to ensure that those conducting procurement throughout the administration do so in a professional manner. The assessors did not find evidence of efforts in this respect.

- **Recommendations**

Montserrat could consider what would constitute a meaningful approach to professionalization and performance monitoring. Any measures should take into account the main needs of the public procurement workforce, and take into account the context, i.e., the relatively small size of the public

procurement workforce, and the limited capacity of the central procurement operations. However, performance monitoring, training and professionalization do offer benefits even in a small island context: where human and financial resources are scarce, it matters all the more how these are deployed. Additional opportunities for increasing capacity exist in the regional context, for example through procurement networks in the regional institutions such as OECS.

A needs assessment could be the beginning of a more strategic approach in this area. Elements of a capacity building strategy could include measures such as:

- Using the Procurement Board as a multiplier of procurement knowledge, i.e. seeking training abroad and passing it on to the procurers in the individual contracting authorities on a regular basis
- Providing supporting documents, a contact point and similar measures, based on internationally available standards.
- Gathering, analysing and disseminating data related to first, tenders conducted by the Procurement Board, and later related to that of other contracting authorities to learn about procurement performance.

3.3. Pillar III - Public Procurement Operations and Market Practices

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

The largest and most complex procurement processes in Montserrat are carried out by the Public Procurement Board. These are carried out with documents that are in general well integrated and clearly specify evaluation criteria, requirements and intended outcomes. Some of these are carried out in the myTenders e-Procurement platform, although bids are also accepted in paper.

Involvement of external stakeholders in the procurement cycle is low, and happens only during the planning stage. Some suppliers were consulted about the draft of the 2017 proposals to reform the public procurement system further, but there is no formal consultation process on the island. Bearing in mind the particularities of an island with a population of 5,000 persons, the private sector is fairly competitive and organised, and willing to participate in the public procurement market. Some gaps persist related to the absence of programmes to build capacity among suppliers and the lack of a supplier register.

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.

Procurement done under the Procurement Unit generally achieves its objectives. However, some gaps were identified for the three sub-indicators of this indicator, related to planning, participation of external stakeholders and contract management, but none constitute red flags.

- **Findings**

The assessors had access to the physical files of four procurement processes and found four additional processes carried out in the e-procurement myTenders platform. In addition, a recent request for proposal and invitation to tender was received. The physical files corresponded to the following processes: ferry services, verge cutting, drain cleaning, expansion of ICT in primary schools, and social housing. The four processes analysed from myTenders were the following: An early market engagement for a geothermal PPP, a consultancy for air and sea access strategy, ferry services, and a terrestrial fibre optic project. The invitation to tender related to the development of a tourism strategy, and the request for proposals to a submarine fibre optic cable. The two latter cases did not include any files beyond the invitation / request itself.

According to the Procurement Unit, depending on the contract, market research is conducted by asking for expressions of interest, especially for large contracts. The tender documents that were analysed by the assessors did not include conclusions of market engagement or documentation of any other planning aspects. An estimation of budget is made with historical data and quotes from usual suppliers. In interviews, stakeholders mentioned that these estimates were consistently too low when compared to the eventual value of projects when the award was made, especially in those cases where local knowledge is scarce, such as the airport control tower.

The Public Finance Regulations allow the requiring entities to conduct pre-qualification, without involvement of the Procurement Board.

There are clear thresholds and cases for using the procurement methods. The persons interviewed during the fact-finding mission did not report any concerns about splitting contracts or inadequate choice of procurement methods, and thus this does not seem to be a problem in Montserrat.

The tender documents analysed clearly define the needs and state the requirements and desired outcomes of the goods or services to be provided. The documents are integrated and easy to understand. A similar layout is used, and for the processes that are carried out in the e-procurement platform there is in general a common pattern.

The documents specify clear evaluation criteria and scoring rules that leave no ambiguity and guide both bidders and evaluators to determine the total score of each bid. The evaluation criteria in the analysed documents consider price and non-price factors, but no sustainability criteria.

Procedures for bid submission and receipt are clear. The use of an e-procurement system provides guarantees for suppliers in relation to a timely and transparent bid opening procedure. Nevertheless, bids are also accepted in paper and there is no clear procedure for bid opening established in the tender documents in relation to the opening of this type of bids.

Confidentiality is enshrined in the Public Finance Regulations and further ensured by the use of an e-procurement platform, for the bids presented through the myTenders portal. The interviewed stakeholders did not report any possible breaches of confidentiality, and no evidence to suggest breaches were otherwise encountered. According to the persons interviewed, the selection and award process is carried out effectively, efficiently and in a transparent way.

The interviewed persons consider that contracts are implemented within days after the process is awarded. They see a clear benefit in disclosing the contract along with the tender documents, so that no negotiation of contract clauses takes place after bids are submitted.

Although not being implemented in all contracts, some of them including the port or the ferry services contain considerations in line with international conventions for the protection of environment, such as the International Convention for the Prevention of Pollution from Ships.

According to the interviewed persons, the Procurement Unit is not involved in supervising the delivery of the goods or services, nor in any activity related to contract management. The accountant officer at the requiring entity is responsible for monitoring but this procedure is not standardised, and thus prone to subjectivity. Although some agencies such as the Department of Public Works state that they

send quarterly reports to the Finance Secretary about contract implementation, this is by no means a regular practice among procuring entities. In line with this fact, the proposed reform to the Public Finance Regulations confirms that contract management is poor in the public sector and propose a new section with key principles of good contract management.

Representatives from the private sector who were interviewed during the fact-finding mission affirmed that payments are processed in a timely manner. In relation to contract amendments, contracting agencies and suppliers stated that these happen on very few occasions.

The involvement of external stakeholders in public procurement processes generally takes place only during the planning stage. This is especially the case for the procurement of public works, where citizens sometimes ask questions about the place of a new construction, or other relevant aspects. In case procurement is carried out using funds from CDB's Basic Needs Trust Fund, extensive community liaison is undertaken to ensure feedback from citizens is received and considered.

Finally, although there is some implementation of e-Procurement, files are not kept in an orderly and complete manner, despite regulations requesting otherwise.

- **Substantive gaps**

Except for large projects, market research is limited to asking for quotations. In a number of processes, the estimated budget is too low with respect to what the market offers, especially in those areas where local knowledge is scarce. Furthermore, no documentation of the planning stage is kept in the procurement files.

While some documents and procedures share similarities across procurement cases, more standardisation of the tender documents is possible. There is currently no consideration of sustainability criteria.

There are gaps related to the procedures for bid opening. As bids are accepted in paper, there is no clear procedure outlined in the tender documents about bid opening. Furthermore, the Public Finance Regulations do not explicitly allow external stakeholders other than suppliers and their representatives to attend bid openings.

The supervision of contracts is the responsibility of each procuring entity, and there are no common guidelines or procedures for performing that task. Contract clauses do not provide incentives for exceeding defined performance levels.

Except for community meetings during the planning stage, there is no evidence that external stakeholders are involved with the procurement process. This is in part due to the limited public information that is available for procurement processes. For example, contract awards below the thresholds specified in the regulation are not being announced.

Except for major contracts handled by the Procurement Unit, procuring entities are not sharing information about the pre-tender stage nor contract implementation with the Procurement Unit, impeding the calculation of statistics about the whole procurement cycle. Thus, the Procurement Unit does not have complete and accurate information of the procurement processes.

- **Recommendations**

Montserrat could consider strengthening the planning stage of the procurement process. Training and guidelines are a means of explaining the importance of carrying out sound market studies and establishing common procedures to do so. An emphasis should be put to documenting the planning process and keeping this information in the procurement records for review by external stakeholders and future consultation, including when needed during judicial processes.

Tender documents could be further standardised. For this, the use of the myTenders portal could be expanded to all the processes carried out on the island, or at least those that are handled by the Procurement Unit. These standard documents could include sustainability criteria. In addition, the

Government of Montserrat could study the possibility of expanding the use of the e-procurement system to include contract implementation, so that requiring entities are allowed to use the platform to upload the signed contract, amendments, payment information and implementation reports. This would in turn enable the Procurement Unit to have all the information in a single and orderly file and provide the necessary information for the calculation of statistics to improve the public procurement system.

Involvement of external stakeholders could be boosted by disclosing more contract information including for contracts below the threshold specified in the regulation and allowing their participation in bid openings and other stages of the process, such as contract implementation. For the latter, guidelines for implementing entities could be drafted by the Procurement Unit to provide common procedures for managing the contract and supervising its quality and execution.

Indicator 10. The public procurement market is fully functional

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

Keeping in mind its characteristics and challenges as a small island (both population- and demand-wise), Montserrat's procurement market is functional, especially in regard to the suppliers' perception of and access to the public procurement market. Gaps persist because of the lack of dialogue mechanisms with the private sector, the fact that there are no programmes to build capacities among suppliers, and the absence of strategies for key sectors.

- **Findings**

Exchanges between public institutions and the private sector are characterised by the small island context, where exchanges between both groups happen adhoc and informally. According to the procurement unit, meetings with specific suppliers have been organised to share information about the procurement system and how to participate in the tenders, with good turnout. Suppliers have been consulted when adjusting tender documents. The draft of the public procurement reform was published online.²³ Some public hearings were carried out to explain the proposed reforms. The interviewed suppliers stated that they feared being excluded from future opportunities if they openly expressed their disagreement with the proposed changes. Other did send comments but did not receive any feedback from the Procurement Unit.

The competitiveness and organisation of the private sector has to be considered in the context of a small island inhabited by 5,000 persons. Keeping this in mind, the private sector is fairly well organised and there are associations such as the Chamber of Commerce, and suppliers who are willing to participate and compete for government contracts. In any case, many goods and services are being sourced from abroad, due to the lack of industrial, manufacturing and service suppliers for many products.

²³ Available at: <http://www.gov.ms/wp-content/uploads/2017/03/Proposed-changes-to-Procurement-Regulations-consultation.pdf>

Local suppliers feel that they have the necessary means of getting to know about new opportunities to participate in the public market. Information is available for those interested in a specific procurement process, and there are in general few constraints to participate. Suppliers also reported that they are satisfied with the timeliness of payments. Montserrat does not have a register of suppliers.

Suppliers interviewed stated that they would find it better to work with a central purchasing unit which could organise procurement for most standardised goods, because they would be able to bid for a rather complex process once instead of answering to multiple tenders for the same products carried out by different procuring entities.

The main sectors identified during the interviews were public works, vehicles and consultancy services. No proper document or formal identification has been drafted, nor specific strategies for these sectors developed.

- **Substantive gaps**

Although the Government of Montserrat is disclosing drafts of reforms, most of the suppliers interviewed during a visit in the state perceive that it is not carrying out a fully consultative process with the private sector when formulating changes to the public procurement system, and that no feedback is given to comments sent by suppliers.

There are no structured programmes in place to train suppliers, provide financing or build capacity to engage with the public market. In particular, there are no structured or recurring training sessions nor guidelines provided for suppliers on how to answer tenders, understand contract clauses or use the myTenders portal. In fact, the assessors noted for the procurement processes they reviewed which were carried out on the e-procurement platform that no requests for clarifications were sought during the tender process by interested parties, although some of the processes were related to fairly complex operations.

The Procurement Unit does not have a complete register of suppliers, which impedes carrying out better market and identifying risks and opportunities in specific sectors. Furthermore, key sectors have not been identified in a formal document to set up procurement strategies targeted specifically to each of these.

- **Recommendations**

Montserrat could consider engaging more with suppliers through the existing associations to encourage an open dialogue especially regarding procurement reform. Regular spaces for discussion could be fostered to understand the needs and requests of the private sector and to give feedback on the comments made by suppliers. This strategy could be further developed by understanding the supplier ecosystem, for which a register of suppliers would be very important. Deploying the e-procurement system to the whole of government procurement processes would facilitate this task, as suppliers need to register to download the tender documents and bid online. The information of this register would also serve to segment suppliers by sector, to better understand specific important sectors, assess risks and opportunities, and finally develop complete strategies for them. In addition, competition could also be boosted by publishing notices of tender across the CARICOM as the proposed reform suggests, at least for those contracts above the regional threshold.

One of the main recommendations related to the engagement with the private sector is offering suppliers training and guidelines on the issues that are most important for them, such as how to properly draft bidding documents, use of the myTenders portal and understand contract provisions. Emphasis should also be made on using the e-procurement platform to maintain a clear and open dialogue, asking questions and exchanging messages with the Government of Montserrat.

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, including appropriate controls, and appropriate measures to address the potential for corruption in the system. The pillar also covers important aspects of the procurement system, which includes stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

Publically available information about procurement processes is scarce, except for those processes carried out in the myTenders platform. Engagement of citizens with the public procurement system remains generally low, although in the context of a small island persons may contact directly officials of all levels in public gatherings or by the phone.

Stakeholders interviewed affirmed that the audit function has improved recently. Some challenges persist, especially regarding response and documentation of findings, follow-up, training of auditors and a lack of written procedures for internal controls.

Although an administrative review procedure exists, the suppliers interviewed during the fact-finding mission prefer the judicial procedure, as it is deemed be fairer and unbiased, and they may obtain financial compensation. Neither of the procedures in place result in remedies.

In relation to anti-corruption measures in the public procurement system, a general anti framework exists, specifying the basic rules and procedures, including a Code of Conduct, asset disclosure for high level officials, and a debarment procedure. An Integrity Commission is called for by legislation, but currently not operating.

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

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

The small population of Montserrat allows for direct interaction between citizens and officials. However, gaps were identified for this indicator because this direct interaction is not being utilised extensively in the context of procurement; there are no formal dialogue mechanisms between government and civil society; and open information is limited and not enough to audit and monitor procurements.

- **Findings**

For particular procurements, stakeholders generally learn about new processes through the myTenders portal, local newspapers and radio. For public works, billboards with basic information are displayed next to the construction site. Information in general is very limited for those processes, which are not carried out through the e-procurement platform, and overall, only a small proportion of the procurement procedures seem to be carried out via myTenders. Tender documents in myTenders are available for download for free.

Although there are no prohibitions, the Public Finance Regulations do not allow explicitly permit the participation of citizens at any stage of the procurement process. Most citizen participation occurs at the planning stage. The small population allows for direct participation where individuals call or

directly ask those government officials involved in a certain procurement or talk to them in public places or gatherings. For public works, when the process is conducted under international procedures, such as through the Basic Needs Trust Fund of the Caribbean Development Bank, there is a special emphasis in community liaison to ensure feedback is given and considered. Engagement with the community is not documented in the records kept by the Procurement Unit.

As was mentioned in the findings of Indicator 10, the draft of the public procurement reform was published online, but civil society did not provide any comments.

- **Substantive gaps**

Although the Government of Montserrat is disclosing drafts of reforms, interviewed stakeholders deem that it is not carrying out a fully consultative process with civil society when formulating changes to the public procurement system, where comments of citizens are heard and action is taken upon them and feedback is provided. There is no evidence that the Government of Montserrat is considering input from civil society when reforming the public procurement system. In addition, no programmes are in place to build the capacity of citizens to understand and monitor public procurement.

Information is limited and there are only the few processes carried out in the myTenders portal have documents easily available for consultation.

The current regulatory framework does not have provisions allowing citizens to participate in any stage of the procurement process. Except for the meetings held during the planning stage of processes, especially public works, there is no evidence of citizens participating directly in other stages of the procurement process. Involvement during the planning stage is not documented in the records of the processes.

- **Recommendations**

Montserrat could offer the necessary spaces for dialogue with citizens when reforming the public procurement system, and also make sure that reforms are explained, comments are received, and feedback is given.

To improve external stakeholder engagement during the procurement process, guidelines and training could be developed to explain specific aspects of the procurement cycle to citizens. Special attention should be given to the use of the e-procurement portal. This would coincide well with an expansion of e-procurement for all procurement, as this would boost the information available to monitor procurements.

The next reform to the public procurement system's legislation and regulation could include explicit provisions to allow citizens to participate throughout the procurement cycle. Related provisions should be also included in the tender documents and recorded for future consultation in the procurement records.

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.

Montserrat has functioning control and audit systems. There are nevertheless gaps identified in all the sub-indicators of this indicator, related to follow-up mechanisms, written audit procedures, and the legal implementation of the audit and risk committee.

- **Findings**

The Supreme Audit Institution of Montserrat is the National Audit Office headed by the Auditor General. The Auditor General has the necessary powers to audit any public entity (including statutory bodies) and must annually submit to the Legislative Assembly a report of the accounts audited.

According to stakeholders, audit and internal control has recently improved dramatically, compared to the situation that was flagged in the PEFA 2010 report. UK's Department for International Development (DFID) has been very involved in supporting the reform.

According to stakeholders, the Auditor General carries out external audit and checks for the existence of tender documents, to determine whether they meet standards set out in the procurement regulation. Its office has never conducted particular procurement audits but regularly checks procurement processes of departments and also those carried out with the intervention of the Public Procurement Board. The annual audit reports carried out by the Auditor General are available online at <http://oag.gov.ms/publications>. These are presented to the Publics Accounts Committee, which according to the Financial Secretary is operating well, and carry out the necessary meetings to revise these reports. Reporting rules are in place in case irregularities are discovered.

According to stakeholders, internal audit comprises a desk review of regulation and comparison with best practices, along with a transactional review of the processes. For the latter, a random sample of tenders is selected to perform a compliance check that all the necessary documentation is included in the file. The auditors mostly check physical files, but also documents in myTenders. According to stakeholders, audits are carried out at least annually for all ministries. In addition, the Public Procurement Board is audited annually internally. The legislation does not establish a specific timeframe for implementing recommendations.

The persons interviewed stated that there are no written procedures stating internal controls. To ensure balance and proper risk mitigation, an internal government audit and risk committee has been set up. Nevertheless, there have been issues identified with the legality of this committee, and an ordinance must be passed for it to be fully operational.

Stakeholders mentioned that an audit manual based on the International Professional Practices Framework (IPPF) of the Institute of Internal Auditors of North America (IIA) had been developed for Montserrat, but assessors did not receive a copy. Supposedly, this manual does not have any special provisions related to procurement.

According to the auditor interviewed, training for auditors is provided two times per year. The SAI of Jamaica provided training for external audit and carried out practical exercise using an ICT project as an example. The auditors have also received training by the International Development initiative (IDI) of the International Organisation of Supreme Audit Institutions (INTOSAI). Only some of the auditors have been trained in how to carry out procurement audits.

Auditors are selected through a competitive process that starts with the vacancy being advertised. An Interview is then conducted, and the selected person undergoes training to start his job. The process is fully independent.

- **Substantive gaps**

According to interviews, the audit performed includes compliance checks, but no complete effectiveness nor efficiency reports. There are no clear mechanisms for follow-up on findings, and recommendations are in general only checked when the next audit is carried out. There is no evidence

that recommendations are responded to and implemented on a timely manner and the legislation does not establish a specific timeframe for implementing recommendations.

There are no written procedures that state requirements for internal controls and the assessors were unable to check the audit manual.

The new audit and risk committee, which should hold government officials liable to recommendations, is not operational because the ordinance that is necessary to provide it with the legal basis has not been yet passed.

Although there are programmes established to train auditors, few auditors have undergone training in procurement audits. According to stakeholders, the knowledge of procurement is not a means of appointing auditors to carry out specific audits.

- **Recommendations**

The improvements made to the audit in Montserrat could be further developed if efficiency and effectiveness reports were included, and follow-up mechanisms were created to check that recommendations are responded to and implemented on time. These improvements should be incorporated in the audit manual.

To ensure that procuring entities carry out sound procurement processes that consider possible risks, a written manual could be drafted to explain how to implement internal controls and provide examples of best practices.

The audit scheme could be consolidated with the necessary legal provisions to guarantee the legality of the newly created audit and risk committee, as well as define timeframes for implementing audit recommendations.

In relation with training of auditors, a clearer emphasis on procurement should be given, to ensure that all auditors have the capacities to carry out procurement audits.

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.

Montserrat has administrative and judicial appeals mechanisms with gaps related to the timeframes for decisions and the way members are appointed to the Complaints Commission. A red flag is raised because suppliers perceive the administrative mechanism as biased, and this cannot be mitigated.

- **Findings**

The Public Procurement Board is the first administrative review body. For contracts under the threshold, the review is done directly by the procuring entity. Decisions may be appealed to the Finance Secretary and finally go to the Complaints Commission, members of which are appointed by the Governor.

Although rules for the Complaints Commission are satisfactorily stated, the interviewed complainants prefer to go directly to court. Suppliers interviewed do not trust the administrative review procedure, as they feel it is biased and prefer to go to court, which solves the case with judges from outside of Montserrat and allow them to receive financial compensation.

According to the rules, the Complaints Commission issues final and immediately binding decisions. These decisions are confidential and not published. The Complaints Commission does not charge fees.

A supplier has right to send a request for review within 7 business days of the decision to award. The first review body has 14 days to come to a decision. Finally, appeals can be submitted to the Complaints Commission within 14 days of the supplier's receipt of the decision. There are no provisions for suspending the procurement process while a decision is made. Laws have established times to decide on complaints and appeals in the administrative system, but no cases were found to determine whether decisions are made within the time frame specified.

The judicial appeal procedure operates first with the Court of Appeal of the Eastern Caribbean Supreme Court and final appeals are handled by the Judicial Committee of the Privy Council (JCPC) located in London. There were no cases found that had gone to this final appeals stage. Decisions of the judiciary are binding for all parties, published online and rendered based on available evidence submitted by the parties and the courts are not involved in the procurement process. The courts appear to be functioning and adequately staffed, and the procedure appears to be balanced and unbiased.

The timeframes in the judicial complaints procedure make it impossible to have a decision before the award of a contract. Thus, the judiciary cannot impose remedies. The fees payable in respect of Court proceedings are established, and not seem to restrict access to the complaints procedure for suppliers.

- **Substantive gaps**

Despite the existence of an administrative review and appeals procedure, there are gaps identified. No provisions are in place for suspending the procurement process while a decision is made by the administrative instances, and the timeframes in the judicial complaints procedure make it impossible to have a decision before the award of a contract. This results in appeals being decided after the contract is awarded and no remedies can be imposed in practice.

The interviewed suppliers stated during a visit in country that they would not trust the administrative review procedure and thus do not use it. They stated that although they have to pay fees in the judicial procedure, the judicial procedure would promise for a potential financial compensation if the appealing suppliers would win the case. Therefore, suppliers stated, they would prefer the judicial procedure. In addition, suppliers admitted that they preferred the judicial procedure because it is usually carried out by judges, which are from outside Montserrat and are therefore not linked to the public officials involved in the procurement process. As a result, these judges are considered by the suppliers as unbiased. A red flag must be raised as the interviewed suppliers stated that they would always perceive decisions of the commission as biased. Suppliers stated that in the context of a small island, the members of the commission would probably be somehow related to the procurement officials.

Other gaps identified related to the administrative procedure are the confidentiality of the decisions that the Complaints Commission would make, and the fact that there is no clear procedure for appointing the members of this appeals body. Both aspects weaken the accountability and independence of the appeals body.

- **Recommendations**

The administrative procedure could be improved with provisions that might be included in the proposed reform to the public procurement regulation and legislation. Remedies should be clearly defined and Montserrat could consider suspending the procurement process while the review and appeals bodies come to a decision, to guarantee that the rights of the interested parties are respected.

The decisions of the Complaints Commission should be published and made available online. The members of this commission should be completely independent from the procurement transactions. This would build trust among the suppliers to use it the challenge procedure.

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.

Montserrat has provisions on prohibited practices in its procurement documents. Gaps were identified for the rest of the sub-indicators, and red flags were raised because of the lack of civil society organisations capable of monitoring procurement, the lack of a complete anti-corruption framework, the absence of mechanisms for reporting prohibited practices and the fact that the Integrity Commission is not operating.

- **Findings**

International treaties ratified by the United Kingdom are not automatically transferred to British Overseas Territories. This is the case for the United Nations Convention against Corruption. On the other hand, the UK Bribery Act 2010, which includes comprehensive definitions related to bribery, applies to British citizens including in the Territories.

Anti-corruption provisions are found in Montserrat's Integrity in Public Office Act, which defines bribery, gifts, advantages and other related aspects related to corruption. Contracts and procurement are considered expressively. Consequences and penalties for government officials and individuals found guilty of bribery or other related offences are established (monetary fines and imprisonment.)

The Integrity in Public Office Act includes a Code of Conduct, including provisions on conflicts of interest and a cooling-off period. Both provisions have some shortcomings: The latter has an undefined timeframe, applies to the whole of Government and not only to the institution where the official served, and can be bypassed if the official discloses the situation and the value of the contract is less than 50,000 XCD. Furthermore, the Code of Conduct only applies mandatorily to high-level officials which are included in the First Schedule of the act, and breaches to it result in criminal penalties.

The Integrity in Public Office Act creates the obligation for high-level officials listed under the First Schedule of the act to provide declarations of income, assets and liabilities. Possession of properties or resources that are not accounted for are deemed as illegitimate.

Procuring entities are allowed to disqualify a supplier from a procurement process if it knowingly submits false information. If a supplier does this twice, the entity may, with the approval of the Public Procurement Board, suspend the supplier from contracting with that entity, or debar the supplier of some or all procurement processes.

Montserrat does not have a complete anti-corruption framework in place. The Integrity in Public Office Act creates the Integrity Commission, but only grants it power related to the declaration of income, assets and liabilities, and to investigate complaints and allegations related to bribery, corruption and other prohibited practices under the act. Prevention and detection tasks are not assigned to any institution. Furthermore, as stated in the interviews, the Integrity Commission is not currently operating and some of the interviewed persons stated that laws related to integrity are not being enforced. In addition, there are no civil society organisations present to monitor and audit procurement.

- **Substantive gaps**

There are substantive gaps related to this indicator. The Code of Conduct included in the Integrity in Public Office Act, which regulates conflicts of interest, only applies to high-level government officials.

Other public officials including those that may be involved in certain procurement processes are not included under its scope. In addition, the provision related to cooling-off periods for former public officials is ambiguous and not bound in time and may be bypassed if a disclosure of information is made.

There is no evidence that procuring entities are required to report allegations of fraud, corruption or other prohibited practices to law enforcement authorities. Furthermore, there is no procedure to do this. There is also no evidence of reports of prohibited practices nor follow-up thereof. Suppliers interviewed during the visit in country stated that they would not denounce fraudulent or corrupt acts because they fear being blacklisted from new invitations to restricted tenders. While this statement reflects the experience of individual suppliers, the opinion of the suppliers is in line with the fact that there is no evidence that the laws on prohibited practices are being enforced by the application of penalties.

The debarment system does not include a specific procedure for due process, nor the possibility for the supplier to appeal the decision. The consequence for submitting false information is not clear and prone to subjectivity. Other prohibited practices do not lead to debarment.

The anti-corruption framework lacks institutions devoted to preventing and detecting corruption in government, and the Integrity Commission established in the Integrity in Public Office Act is not operating. In addition, there is no evidence of other mechanisms for identifying and mitigating corruption risks other than the declarations of income, assets and liabilities, which are only mandatory for high-level officials and in any case this is not serving its purpose because of the lack of operation of the Integrity Commission. Furthermore, statistics on these matters are not being collected or published.

There is no evidence of secure and confidential channels for reporting cases of prohibited practices and following-up allegations and it is not clear to whom any concerns should be reported. There are also no provisions to protect whistle-blowers.

Training programmes related to integrity or mechanisms to disclose interests such as the income declarations are not being provided to public officials.

As there are no organisations present in Montserrat in charge of social audit or control and monitoring of government contracts, civil society is not contributing to the integrity of the public procurement system. From the private sector perspective, internal control mechanisms are not being used.

Red flags must be raised for this indicator, especially because of the lack of evidence of application of penalties, the absence of a framework for preventing and detecting corruption, the fact that the Integrity Commission is not operating and that there are no civil society organisations carrying out social audit and contract monitoring, and the lack of secure mechanisms for reporting prohibited practices. All these gaps hinder achievement of basic public procurement principles.

- **Recommendations**

Solving several of the gaps identified would require a change in the legal provisions currently in place in Montserrat. While this is carried out, the Government of Montserrat could analyse establishing related provisions in guidelines or other soft law mechanisms. The Integrity in Public Office Act should apply to officials involved in procurement transactions, and not only to high-level ones. The cooling-off period should be bound in time and enforced even if a disclosure of interest is made by the involved public official.

Montserrat should consider establishing obligations for the procuring entities to report allegations of fraud and other prohibited practices directly to law enforcement authorities, and clearly define a procedure to do this. This means that if procuring officers detect any suspicious activity during the management of a procurement procedure, it is clear to whom they should report this suspicion and

how. This could be complemented with other provisions to provide confidential and secure channels for reporting cases of prohibited practices, including whistle-blower protection.

In relation to debarment, the list of possible prohibited practices that result in this penalty could be broadened to include corruption and collusion, and a clear due process should be established, granting the affected supplier the right to appeal a debarment decision.

One of the most important recommendations is to make the necessary arrangements to have the Integrity Commission operating. Montserrat could consider assigning to this commission tasks related to preventing and detecting corruption and keeping track of associated indicators and statistics to complete an anti-corruption framework in the island. The Integrity Commission could also undertake the task of providing regular training for officials on the mechanisms in place, such as the declarations of income, assets and liabilities, and other integrity topics.

Finally, as was mentioned in other indicators, training and spaces for dialogue that should be created with the private sector and civil society could include considerations about integrity and how these stakeholders can support the Government of Montserrat achieve a better and more transparent public procurement system.

4. Consolidated Recommendations

Key recommendations (summary)

- Regulate PPPs and concessions.
- Regulate contract management.
- Include in the legal and regulatory framework references to sustainability and to the obligations arising from international agreements.
- Harmonise budgetary and expenditure rules with procurement rules.
- Review the institutional arrangements to avoid an institutional conflict of interest (separate operations and regulation?)
- Design and develop a plan to expand the information system towards analytical capabilities and expanded e-procurement functionalities.
- Design and develop a plan to professionalise procurement.
- Train procurement officials on market engagement and analysis.
- Expand the use of e-procurement.
- Engage suppliers in a dialogue with government and provide them with training and capacity building programs.
- Raise awareness of the general public on basic aspects of procurement.
- Draft internal control procedures.
- Improve the administrative challenge procedure to enable remedies and the suspension of the procurement process while a decision is made.
- Put the Audit & Risk Committee and Integrity Commission to operation, and train officials on integrity topics.

The main recommendation centres on the adoption of the revised procurement regulations, which are currently being discussed. Once in place, the revised regulations will address many of the gaps highlighted in the assessment. Therefore, Montserrat could continue the process to update the regulations and take advantage of the MAPS exercise by incorporating the recommendations from this assessment.

In the medium term, the legal and regulatory framework could be updated to include a rule to establish the minimum time frame between the call for proposals and bid submission. Other

regulatory changes could include the design of security procedures in procurement, both at a physical and electronic level to protect from hacking, phishing or any other security challenge. In addition, Montserrat could regulate contract management responsibilities, procedures to follow up on contract performance and rules for contract amendments.

Montserrat could consider to review whether there is a need to regulate PPP's and concessions, as well as rules for specialised cases of procurement, such as procurement by statutory bodies. The Government of Montserrat could also evaluate the need to include a reference to sustainable public procurement and / or sustainable development in the public procurement legal framework. Such an analysis could include centralisation initiatives. In addition, the government could identify obligations derived from international instruments that have a bearing on public procurement.

Aside from legal changes, Montserrat could consider improvements to tools and guidance material. Available support tools could be expanded, the Procurement Board should draft all the documents listed in section 16.1.(d) of 2012 Regulations to support the work of procurement officers, including the procurement manual. In updating procedures, Montserrat could also make an effort to harmonise the procurement rules and the budget and expenditure regulations. Other procedures could be developed, for example a yearly procurement plan and tools to report its execution.

To ensure that procuring entities carry out sound procurement processes that consider possible risks, a written manual could be drafted to explain how to implement internal controls and provide examples of best practices.

Several indicators highlighted the need for increased transparency in the public procurement system. Montserrat could consider publishing the entire legal and regulatory framework, including guidance material and templates, in an easily accessible web portal. T

Involvement of external stakeholders could be boosted by disclosing more contract information including for contracts below the threshold specified in the regulation and allowing their participation in bid openings and other stages of the process, such as contract implementation. For the latter, guidelines for implementing entities could be drafted by the Procurement Unit to provide common procedures for managing the contract and supervising its quality and execution.

Montserrat could offer the necessary spaces for dialogue with citizens when conducting follow-up reforms to the public procurement system, and also make sure that reforms are explained, comments are received, and feedback is given.

In general, Montserrat might wish to re-evaluate the institutional set-up with regards to public procurement, working towards a clear definition and separation of responsibilities, while being mindful of the resource implications that such an institutional separation would require. Montserrat could consider separating the operative from the regulatory functions of the Procurement Board to reduce conflicts of interest. Two separate units within the Board could be tasked with purchasing and the regulatory and normative function, respectively. Additional responsibilities that are currently not defined should be attributed, possibly as part of the process to review an institutional conflict of interest between operational functions and the normative and regulatory functions.

Montserrat could institutionalise a centralised procurement system for goods, works and services to aggregate demand among Montserrat's procuring entities. Priority could be given to items that are easy to standardise and are procured repeatedly by several procuring entities. This process towards centralisation could also take into account the above-mentioned institutional conflict of interest and emphasising the operational tasks vis-a-vis the regulatory and normative tasks. A policy clarifying rules, procedures and accountability for all procurements, including centralised and aggregated purchasing, as well as institutional requirements should be clarified.

Beyond changes to the legal, regulatory and institutional framework Montserrat could focus on improving procurement performance through additional means. In the context of procurement

systems with limited capacity and resources, as is the case in Montserrat, electronic procurement offers great potential to increase the efficiency and effectiveness of the procurement system, without straining available resources. The main recommendation is to define a responsible entity to plan the further development of the information system for the procurement process. This should include expanding the functionalities of the system, and most importantly to make the information gathered in the procurement process usable for analysis. This could include an open procurement policy to gather, use and publish information about procurement procedures. The strategy should also consider how procurement data can be analysed, and identify how this analysis can contribute to increased value for money, as well as the more efficient and effective management of public procurement in Montserrat. Tender documents could be further standardised. For this, the use of the myTenders portal could be expanded to all the processes carried out on the island, or at least those that are handled by the Procurement Unit. In addition, the Government of Montserrat could study the possibility of expanding the use of the e-procurement system to include contract implementation, so that requiring entities are allowed to use the platform to upload the signed contract, amendments, payment information and implementation reports. This would in turn enable the Procurement Unit to have all the information in a single and orderly file and provide the necessary information for the calculation of statistics to improve the public procurement system.

With regards to the planning stage of the procurement process, Montserrat could provide training and guidelines as a means of explaining the importance of carrying out sound market studies and establishing common procedures to do so. An emphasis should be put to documenting the planning process and keeping this information in the procurement records for review by external stakeholders and future consultation, including when needed during judicial processes. Offering suppliers training and guidelines is another important step to improve procurement performance. Guidance and training could focus on those issues that are most important for suppliers, such as how to properly draft bidding documents, use of the myTenders portal and understand contract provisions. Emphasis should also be made on using the e-procurement platform to maintain a clear and open dialogue, asking questions and exchanging messages with the Government of Montserrat.

Montserrat could consider engaging more with suppliers through the existing associations to encourage an open dialogue especially regarding procurement reform. Regular spaces for discussion could be fostered to understand the needs and requests of the private sector and to give feedback on the comments made by suppliers. This strategy could be further developed by understanding the supplier ecosystem, for which a register of suppliers would be very important. Deploying the e-procurement system to the whole of government procurement processes would facilitate this task, as suppliers need to register to download the tender documents and bid online. The information of this register would also serve to segment suppliers by sector, to better understand specific important sectors, assess risks and opportunities, and finally develop complete strategies for them. In addition, competition could also be boosted by publishing notices of tender across the CARICOM as the proposed reform suggests, at least for those contracts above the regional threshold.

The improvements made to the audit procedures in Montserrat could be further developed if efficiency and effectiveness reports were included, and follow-up mechanisms were created to check that recommendations are responded to and implemented on time. These improvements should be incorporated in the audit manual. The audit scheme could be consolidated with the necessary legal provisions to guarantee the legality of the newly created audit and risk committee, as well as define timeframes for implementing audit recommendations. In relation with training of auditors, a clearer emphasis on procurement should be given, to ensure that all auditors have the capacities to carry out procurement audits.

The administrative procedure could be improved with provisions that might be included in the proposed reform to the public procurement regulation and legislation. Remedies should be clearly defined and Montserrat could consider suspending the procurement process while the review and appeals bodies come to a decision, to guarantee that the rights of the interested parties are respected.

The decisions of the Complaints Commission should be published and made available online. The members of this commission should be completely independent from the procurement transactions. This would build trust among the suppliers to use the challenge procedure.

In the area of integrity and anti-corruption, several gaps would require legal changes beyond the public procurement system. One of the most important recommendations is to make the necessary arrangements to have the Integrity Commission operating. Montserrat could consider assigning to this commission tasks related to preventing and detecting corruption and keeping track of associated indicators and statistics to complete an anti-corruption framework in the island. The Integrity Commission could also undertake the task of providing regular training for officials on the mechanisms in place, such as the declarations of income, assets and liabilities, and other integrity topics.

The Government of Montserrat could analyse establishing related provisions in guidelines or other soft law mechanisms. The Integrity in Public Office Act should apply to officials involved in procurement transactions, and not only to high-level ones. The cooling-off period should be bound in time and enforced even if a disclosure of interest is made by the involved public official.

Montserrat should consider establishing obligations for procuring entities to report allegations of fraud and other prohibited practices directly to law enforcement authorities, and clearly define a procedure to do this. This could be complemented with other provisions to provide confidential and secure channels for reporting cases of prohibited practices, including whistle-blower protection.

In relation to debarment, the list of possible prohibited practices that result in this penalty could be broadened to include corruption and collusion, and a clear due process should be established, granting the affected supplier the right to appeal a debarment decision.

Finally, as was mentioned in other indicators, training and spaces for dialogue that should be created with the private sector and civil society could include considerations about integrity and how these stakeholders can support the Government of Montserrat achieve a better and more transparent public procurement system.

5. Information regarding Validation

The first draft of the report was shared with the assessment focal points in all five states in September 2018. A workshop, both individually with the countries and as a group, was held in September 2018 in Washington, DC, in the margins of the annual meeting of the Inter-American Network on Government Procurement. This workshop served to discuss findings in advance of the formal submission of written comments. A second draft, incorporating comments from the countries, was shared with the countries in December 2018.

This assessment was conducted by a MAPS assessment team coordinated by the OECD with the leadership and support from the Ministry of Finance and Economic Management in Montserrat, CDB, and academic procurement experts. From Montserrat, the main focal point was Harjinder Jutle. At CDB, Douglas Fraser and Johanna Pelaez were tasked with overseeing the assessment. Public procurement experts Maria Margarita Zuleta and Nicolás Penagos conducted background research and compiled the assessment. Paulo Magina and Lena Diesing, from the OECD, coordinated and finalised the overall assessment. In addition, various individuals in Montserrat – members of the administration, civil society, private sector and media were open and frank interview partners that made this assessment possible in the first place.

Annex

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

The documents analysed for this assessment were:

1. Public Finance (Management and Accountability) Act 2008
2. Public Finance (Management and Accountability) Regulations 2012
3. Audit Act 2002
4. Integrity in Public Office Act 2013
5. PEFA report 2010
6. Constitution of Montserrat
7. Proposed changes to the procurement regulations 2018
8. Sustainable Development Plan 2008 – 2020
9. Strategic plan 2019/2020
10. General Terms and Conditions of Contract for Public Works
11. Templates and forms for requests, declaration of conflict of interest, annual plan, procurement tracker
12. Training presentation
13. HR documents
14. Draft of the new procurement regulations (2018)
15. Procurement plan for the Ministry of Education (2018)
16. myTenders Buyers and Suppliers Guides



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