



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF ST. KITTS & NEVIS' PUBLIC PROCUREMENT SYSTEM

2019



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Acronyms

CARICOM: Caribbean Community

CCI: Caribbean Challenge Initiative

CCM: Concerned Citizens Movement

CEELP: Caribbean Energy Efficiency Lighting Project

CIP: Citizenship by Investment Program

ECCB: Eastern Caribbean Central Bank

ECSC: Eastern Caribbean Supreme Court

EDF: European Development Fund

FAO: Food and Agriculture Organisation

HDI: Human Development Index

MESICIC: Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption

NGOs: Non-Governmental Organisations

NRP: Nevis Reformation Party

OAS: Organisation of the American States

PAM: People's Action Movement

PLP: People's Labour Party

QNI: Quality National Index

RSCNPF: Royal St Christopher and Nevis Police Force

SDGs: Sustainable Development Goals

SIDF: Sugar Industry Diversification Foundation

SKNLP: St. Kitts and Nevis Labour Party

UN: United Nations

WECAFC: Western Central Atlantic Fisheries Commission

WTO: World Trade Organisation

XCD: Eastern Caribbean Dollars



Executive summary

The public procurement system of St. Kitts and Nevis is characterised by the absence of an enforced legal and regulatory framework. As a consequence, several aspects in the MAPS indicator framework are not clear and institutions are not in place. Practices, to the extent that the assessors had access to procurement documents for review, exhibit challenges along the procurement cycle. Important elements of an integrity and accountability framework are in place. However, several serious gaps relate to corruption prevention.

Pillar I

The Procurement and Contract Administration Act (2012), intended to regulate public procurement in St. Kitts and Nevis, has so far not been enforced. Likewise, there are no regulations or tools that support the implementation of the legal framework. Once implemented, the 2012 Procurement and Contract Administration Act would represent a relatively complete legal framework for procurement. Gaps would remain with regards to the choice of the procurement method, thresholds, participation rules, evaluation criteria, systems and tools to support procurement and specific regulations for more specialized areas, such as PPP's and sustainable procurement.

There are no provisions related to sustainable procurement or international obligations.

Due to the largely missing legal and regulatory framework, a red flag was assigned to the first pillar.

Pillar II

Rules on public procurement institutions are largely absent, except for limited specifications included in the 2012 Procurement and Contract Administration Act that have not been enforced.

There is no clear relation between financial management and procurement planning in the legal framework of St. Kitts and Nevis. There are no financial procedures defined for the procurement process, neither in the 2012 Procurement and Contract Administration Act nor in the Finance Administration Act. Procurement plans do not need to be prepared. There is no clear appropriation process for acquisitions.

There is an organisational structure in the unenforced 2012 Procurement and Contract Administration Act to address the normative and regulatory function, but its functions do not include all the responsibilities defined by the second sub-indicator of the pillar.

Definitions of procuring entities are included in the 2012 Procurement and Contract Administration Act, which has not been implemented. A Central Purchasing Unit was created in January 2000, mandated with procuring various supplies for the Ministries and Departments in central government. Gaps remain particularly with regards to the delegation of decision-making authority.

St. Kitts and Nevis does not have a public procurement information system or information policy. There are some requirements to gather information and data, but these are restricted to retaining some information with no obligations related to developing and maintaining an information system. E-Procurement has not yet been implemented and the government has not made plans to do so. There is no strategy to manage procurement data and to make it accessible to the public. St. Kitts and Nevis lacks



structured training programmes and performance monitoring systems and does not recognise procurement as a profession.

Red flags have been assigned to every indicator in this pillar.

Pillar III

Procurement practices in St. Kitts and Nevis evidence substantive gaps compared with the assessment criteria. According to the case files that the assessors had access to, gaps relate to the planning, selection and contracting, and contract management stages. Most procurement is being carried out through restricted tendering. There is a general lack of planning. Bid evaluation and contract negotiations are untransparent and seem open to influence. Most of the procurement documents are confidential, information about procurement is not easily accessible and participation of external stakeholders is low.

The private sector is fairly well organised in associations. There are private sector organisations in the islands. However, all sub-indicators of this indicator show substantive gaps when analysed against the assessment criteria, because there is no formal dialogue between the government and the private sector regarding procurement. Suppliers voiced concerns about unequal access to the public procurement market and lack of sector strategies.

A red flag is raised for the selection process, as the current legislation is not being enforced, restricted tendering and fractioning are occurring often. Decisions of the technical evaluators are being overruled.

Pillar IV

There are no dialogue mechanisms. De facto, there is no civil society engagement on the public procurement system in St. Kitts and Nevis.

While institutions for audit exist, some gaps remain, pertaining to some legal provisions and challenges in implementation. Audits are not regularly carried out. The Public Accounts Committee is not operating.

The 2012 Procurement and Contract Administration Act, although unenforced, contains provisions for review procedures, following in general international good practices. To date, nobody has submitted a request for review.

The ethics and anti-corruption measures in St. Kitts and Nevis have serious gaps when analysed against the assessment criteria. St. Kitts and Nevis is one of the few countries that have not ratified the United Nations Convention against Corruption. Some institutions and tools are used, but to a limited extent. The Integrity Commission, a central institution, is not operating. Gaps relate to a lack of enforcement systems, to a functioning Integrity Commission, to civil society organisations capable of monitoring procurement, and to secure mechanisms for reporting prohibited practices.

Red flags are raised for several indicators in this pillar.



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 St. Kitts and Nevis. 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 St. Kitts and Nevis, using the new MAPS (2018). The assessment was led by the Department of Economic Affairs and PSIP in the Ministry of Sustainable Development in St. Kitts and Nevis, 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 St. Kitts and Nevis' 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 St. Kitts and Nevis, by providing concrete recommendations that can be prioritised and presented in a detailed action plan.

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



2. Analysis of Country Context

2.1. Political, economic and geostrategic situation of the country

The Federation of Saint Christopher and Nevis, commonly known as St. Kitts and Nevis is a two-island country and the smallest sovereign state in the Americas, both in terms of its population and geographical area. The island of St. Kitts has an area of 168 km²; the island of Nevis is 93 km² large. A channel called The Narrows separates the two islands. The Population Census (2011) reported a population size of 47,195. The official currency is the Eastern Caribbean Dollar (XCD). St. Kitts and Nevis gained independence from the United Kingdom on 19 September 1983 and it is now a member of the Commonwealth of Nations. Its capital is Basseterre on the island of St. Kitts.

Until the late 1970s, St. Kitts and Nevis was a sugar monoculture economy with government support for small-scale industrialization, and an increasing production of non-traditional crops such as white potato, cabbage and sweet pepper. Subsequently, the economy has been transformed into a service-oriented economy with tourism as the main sector. According to the World Travel and Tourism Council, the total contribution of travel and tourism to GDP in the state was 26.8% in 2017. The total contribution to employment, including indirect jobs was 25.6% for the same year.¹ Two important sources of Foreign Direct Investment (FDI) are the Citizenship by Investment Program (CIP), by which persons can acquire citizenship if they pass the Government's background checks and make an investment into an approved real estate development², and the offshore financial services on the island of Nevis.

St. Kitts and Nevis ranks 72 in the 2018 Human Development Index (HDI).³ Hurricanes Irma and Maria did not affect the islands of St. Kitts and Nevis to the extent of other neighbouring countries. In fact, St. Kitts and Nevis donated XCD 1 million to the Commonwealth of Dominica, XCD 400 000 to Anguilla and XCD 400 000 to Antigua and Barbuda.⁴

St. Kitts and Nevis is considered a high middle-income country with one of the most successful economies in the Caribbean. Nevertheless, the Eastern Caribbean Central Bank (ECCB) reported in 2017, that GDP expanded by 2.1%, a slowdown of 0.8 percentage points when compared to 2016.⁵ The economy is expected to expand at an accelerated pace in 2018 with contributions from the construction, tourism and transportation, storage and communications sectors.

According to the ECCB in 2017, public debt increased by 0.3% to XCD 1,598.8 million (62.6% of GDP), mainly because of the increase in domestic debt by the Nevis Island Administration.⁶

¹ World Travel and Tourism Council, website: <https://www.wttc.org> (accessed 5 August 2018)

² <http://stkitts-citizenship.com/> (accessed 5 August 2018)

³ Human Development Index, website: <http://hdr.undp.org/en/2018-update>(accessed 5 August 2018)

⁴ Government of Saint Kitts and Nevis. 2018 Budget Address. Honourable Prime Minister Dr. Timothy Harris. 6 December 2017

⁵ Eastern Caribbean Central Bank, website: <https://www.eccb-centralbank.org/statistics/dashboard-datas/> (accessed 28 October 2018)

⁶ Eastern Caribbean Central Bank (2017). Annual Economic and Financial Review.



St. Kitts and Nevis is a parliamentary democracy. As a federal state, there is a National Parliament and a Nevis Island Assembly and two separate budgets. The Federal Government has responsibility for foreign affairs, defence and national security. Section 113 of the Constitution allows for the island of Nevis to secede from the Federation through a referendum. In 1998, a referendum was conducted; however, the proportion of votes required by law was not achieved.

The executive branch is comprised of Her Majesty, Queen Elizabeth II as Head of State, who is represented by a Governor-General. The Prime Minister is the Head of Government supported by a Cabinet of Ministers. The Cabinet is comprised of the Prime Minister, six ministers and the Attorney-General.

The public service is comprised of 19 ministries, including the Governor General, the Parliament, the Audit Office, the Office of the Prime Minister, and the Ministry of Finance. It also includes statutory bodies that provide goods and services to the public, for which Ministers have responsibility by law.

The legislative branch is composed of the Parliament that consists of Her Majesty and a unicameral national parliament called the National Assembly, according to the Constitution. The National Assembly is composed of eleven representatives and four senators. The representatives (eight from St. Kitts and three from Nevis) are elected for five-year periods; the Governor General with the advice of the Leader of the Opposition appoints one senator and the remaining three senators are chosen with the advice of the Prime Minister.

The island of Nevis has an Island Assembly and is governed by the Nevis Island Administration (NIA), which has considerable autonomy as prescribed under the Constitution. The Nevis Island Assembly has five elected members and three nominated members. The Administration consists of the Premier and three other elected members and two senators appointed by the Deputy Governor General on the recommendation of the Premier.

The Eastern Caribbean Supreme Court (ECSC) and the Magistrates Court administer the St. Kitts and Nevis judicial branch. The Magistrates Court hears minor cases and is the first-instance court of law in the country. Its jurisdiction is divided into three districts: two on the island of St. Kitts and one on the island of Nevis. The ECSC is comprised of the High Court of Justice and the Court of Appeal. The High Court judges reside at the member states with two assigned to St. Kitts and Nevis. The Court of Appeal is itinerant, travelling to member states on a schedule. The Judicial Committee of the Privy Council in the United Kingdom hears appeals from the Court of Appeal.

The political parties are the St. Kitts and Nevis Labour Party (SKNLP), the People's Action Movement (PAM), the Concerned Citizens Movement (CCM), the People's Labour Party (PLP) and the Nevis Reformation Party (NRP). The last elections were held in February 2015 and Team Unity, a coalition of three opposition parties (PAM, CCM, PLP), defeated the previously ruling SKNLP. This coalition won seven of the 11 elected seats in the National Parliament. The current Prime Minister is the Team Unity leader. The next elections will be held in 2020.⁷

⁷ Caribbean Elections, website: http://www.caribbeanelections.com/elections/kn_elections.asp (accessed 5 August 2018)



Observers from the Organisation of the American States (OAS) affirmed that the last election was free and fair, but they noted procedural difficulties in the election process especially in the slow transmission of results. For that reason, the observers suggested electoral reform.

The Royal St Christopher and Nevis Police Force (RSCNPF) has more than 450 officers. According to the RSCNPF Commissioner, in 2017, crime increased in three areas, including drug-related offenses, sexual crimes and robberies.⁸

Participation of civil society and NGOs is protected by provisions such as sections 12 and 13 of the Constitution that establish the protection of freedom of expression and the protection of freedom of assembly and association.

Since its independence, St. Kitts and Nevis has been interested in participating in international organisations, beginning with the United Nations (UN), which it joined in 1983. Currently, St. Kitts and Nevis is a member of the following organisations:

- Caribbean Community (CARICOM)
- Caribbean Development Bank (CDB)
- Organisation of Eastern Caribbean States (OECS)
- Organisation of American States (OAS)
- World Trade Organisation (WTO)

St. Kitts and Nevis also has economic treaties with different states like Brazil, Colombia, Costa Rica, the Dominican Republic, Guyana, and Venezuela.⁹ It is also a member of the International Centre for Settlement of Investment Disputes and it is a signatory of the CARIFORUM-EU Economic Partnership Agreement (EPA). The country benefits from the 11th European Development Fund (EDF) with an initial amount of EUR 5 million for developing of a sustainable energy sector for the period between 2014 and 2020.¹⁰

Regarding specialized topics like corruption, St. Kitts and Nevis is a member of the Inter-American Convention against Corruption and the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC). Nevertheless, St. Kitts and Nevis has not ratified the United Nations Conventions against Corruption.¹¹

⁸ “Crime stats show decrease in violent crime” <http://www.thestkittsnevisobserver.com/local-news/crime-stats-show-decrease-violent-crime/> (accessed 5 August 2018)

⁹ UNCTAD, website: <http://investmentpolicyhub.unctad.org/IIA/CountryIris/178#iiaInnerMenu> (accessed 5 August 2018)

¹⁰ Office of the National Authorising Officer for EDF and EU-SKN engagement (official correspondence dated 19 February, 2018)

¹¹ United Nations Treaty Collections, website: <https://treaties.un.org/> (accessed 5 August 2018)



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

There is no data publicly available to evidence the proportion of public procurement in St. Kitts and Nevis' public accounts¹², public procurement nevertheless is an important component, as highlighted in the 2018 Budget Address submitted to the National Parliament for budget approval. In fact, the 2018 Budget Address highlights that the state's development is rooted in procurement activities. In the 2018 Budget Address, the Ministry of Finance stated that one of the main activities to contribute to the annual objectives is to complete drafting the procurement regulations. Further, the description of the projects and investments is based on capital projects to be completed through public procurement. This is an opportunity for St. Kitts and Nevis Government to recognise procurement as strategic function of the government.

The budget estimates for 2018 includes the portfolio of projects, which comprises (i) responsible centre, (ii) officer in charge, (iv) goals, objectives, expected results and performance indicators, (v) a financial summary, and (vi) subprograms that can be associated with procurement initiatives. There is a process to implement controls and monitoring systems facilitated through quarterly capital and fiscal reporting and the monthly convening of the Public Sector Investment Programme (PSIP) Operations Committee for capital initiatives. There is currently no requirement for ministries to submit procurement plans.

The legal framework for public procurement is not clear. While a 2012 Procurement and Contract Administration Act has been adopted, this act is unenforced and accompanying regulations are missing. The Ministry of Finance is the key actor of the procurement system. However, the system is not implemented through regulations and therefore, key institutions are not operating. The Procurement Board and the procurement officers are the operative institutions leading the system. The Director of Public Works and the Manager of Procurement in the Ministry of Finance are procurement officers for purposes of works, heavy equipment and tools, architectural designs and land surveys, and goods procurement, respectively. There is also an Administrative Review Board to handle complaints before the parties enter into the contract. To date, no complaints have been filed.

The St. Kitts and Nevis Chamber of Industry and Commerce is a key institution for the procurement system, representing suppliers and linking public and private sectors. The Government engages the private sector through informal arrangements periodically. In addition, on an annual basis, the private sector is involved in consultations on the economy and the development of St. Kitts and Nevis. In the area of procurement, the government engaged the private sector regarding the CARICOM Model Procurement legislation and the related regime.

International partners have been a key player in the public procurement system, particularly the Caribbean Development Bank, the Organisation of Eastern Caribbean States (OECS), CARICOM and the Organization of American States (OAS). As in most states in the region, procurements funded by multilateral development banks and bilateral donors are ruled by the regulation of the agency funding the project.

¹² As proportion of GDP procurement or as proportion of the total government expenditures.



2.3. National policy objectives and sustainable development goals

St. Kitts and Nevis is committed to the Sustainable Development Goals (SDGs) and this is reflected in its legislation and an institutional framework. Corresponding legislation includes the following:¹³

- National Conservation and Environmental Protection Act, 1987
- Development Control and Planning Act, 2000
- Solid Waste Management Corporation Act, 2009
- Public Health Act, 1969
- Pesticide and Toxic Chemicals Control Act, 1999
- Agricultural Development Act, 1973

Nevertheless, according to the UN, there is a general lack of regulations that accompany legislations to address sustainable development.

Regarding the institutional framework, the Ministry of Sustainable Development oversees the agenda related to the SDGs and is responsible for coordinating the development of policies and strategies to ensure the achievement of the SDGs. Other related institutions are (i) the Ministry of Agriculture, Human Settlement, Cooperatives and Environment; (ii) the Ministry of Public Infrastructure, Posts, Urban Development and Transport; and (iii) the Ministry of Communications, Physical Planning, National Resources and the Environment in the Nevis Island Administration (NIA)

The Government of St. Kitts and Nevis has been working with civil society organisations in areas that include poverty reduction, agricultural diversification, environmental management, water resources management, land use planning, housing and infrastructure development, climate change and biodiversity conservation.

St. Kitts and Nevis is a member in the following Partnerships for the SDGs:¹⁴

- The Caribbean Challenge Initiative (CCI) that is a conservation initiative between governments, companies and partners looking to accelerate action to preserve the Caribbean, including coastal environments as marine protected areas (SDG 14).
- The Caribbean Energy Efficiency Lighting Project (CEELP), which seeks to make the transition to low consumption lighting for communities in the Eastern Caribbean (SDG 7).
- Food and Agriculture Organisation's (FAO) Western Central Atlantic Fisheries Commission (WECAFC), which has the objective of promoting the conservation, management and development of the living marine resources (SDG 14).

SDG 6 on clean water and sanitation is a major concern for many Caribbean islands, including St. Kitts and Nevis. In fact, investments needed in this area touch upon procurement as they often require substantial infrastructure investments. St. Kitts and Nevis provides clean potable water to approximately 98% of the population. Areas that do not have water infrastructure are those that remain under development. Next steps in this regard are outlined in St. Kitts and Nevis' 2017 Water Sector Investment Plan. This plan

¹³ Government of Saint Kitts and Nevis, website: <https://www.gov.kn/> (accessed 5 August 2018)

¹⁴ Sustainable development knowledge platform, website: <https://sustainabledevelopment.un.org/topics/sids> (accessed 5 August 2018)



outlines a multi-sectorial crosscutting approach to promote the integration of climate resilience in the water sector, addressing investment needs within six programmatic areas:

- 1) policy, legislation and capacity development;
- 2) catchment management;
- 3) climate resilient water supply infrastructure;
- 4) water demand management;
- 5) green energy; and
- 6) disaster risk management.

Similar, major investments are expected in relation to the establishment of geo-thermal plants in St. Kitts and Nevis.

2.4. Public Procurement Reform

In the last 10 years, St. Kitts and Nevis has been part of a regional movement to further public procurement reform, upon which several neighbouring OECS states have embarked. This agenda became more important from the perspective of procurement as a mechanism to foster growth and development.

In 2009, the Ministry of Finance launched the creation of a Procurement Board as the starting point to improve the public procurement system. The Government of St. Kitts and Nevis, as evidenced in the 2018 Budget Address, appreciates the power of reforming the public procurement function and process, its impact in better managing the scarce public funds and its potential to contribute to inclusive growth by encouraging the participation of small- and medium-sized local businesses. However, St. Kitts and Nevis has not yet fully implemented the reform that had been approved in 2012.

Following the statements made in the 2018 Budget Address referring to the reform of public procurement, the Government of St. Kitts and Nevis formulated a Procurement Action Plan (2012-2016). This action plan identified ten priority areas:

- 1) Continuous improvement.
- 2) Application of the principles of best value for all procurement in the public service.
- 3) Operate a government procurement system that is supported by modern legislation and the highest ethical standards.
- 4) Actively pursue and demonstrate fair and open competition.
- 5) Encourage environmentally advantageous products and services.
- 6) Support local business and economy.
- 7) Develop appropriate procurement procedures.
- 8) Develop procurement competencies.
- 9) Promote e-government procurement.
- 10) Encourage collaborative procurement.

The plan also identifies five strategic actions:

- 1) Introduce modern procurement legislation.
- 2) Organisational and structural modernisation.
- 3) Develop appropriate procurement procedures.
- 4) Develop procurement competencies.
- 5) Introduce e-government procurement.



While the action plan also mapped out responsible institutions, timelines and budget estimates, it was not clear to what extent progress on these actions was tracked.

It is important to note that procurement reforms require participation from concerned stakeholders (private sector and civil society). It requires a consensus or at least an agreement among some of the stakeholders to guarantee the political will required for its implementation.

A report from the United Nations Office on Drugs and Crime (2016) analysed procurement and corruption in small island developing states.¹⁵ Although St. Kitts and Nevis is not specifically considered, the report nevertheless highlights the challenges for public procurement reform rooted in the particular characteristics that many states in the region share, such as the small size of the procurement market, the isolation and remoteness, as well as the colonial history. The conclusions and recommendations present good advice to continue the implementation of the reform:

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

¹⁵ United Nations Office on Drugs and Crime (2016). The United Nations Convention against Corruption. Procurement and Corruption in Small Island Developing States: Challenges and Emerging Practices, <https://www.unodc.org/documents/corruption/Publications/2016/V1608451.pdf>.



3. Assessment

Overview of compliance with MAPS indicators

Red flags raised		Gaps identified		Overall compliance			
Pillar I		Pillar II		Pillar III		Pillar IV	
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	1(b) Procurement methods		4(b) Financial procedures and the procurement cycle		9(b) Selection and contracting		11(b) Adequate and timely access to information by the public
	1(c) Advertising rules and time limits		5. The country has an institution in charge of the normative / regulatory function.		5(a) Status and legal basis of the normative / regulatory institution function		9(c) Contract management
	1(d) Rules on participation	5(b) Responsibilities of the normative / regulatory function		10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	12(a) Legal framework, organisation and procedures of the control system
	1(e) Procurement documentation and technical specifications	5(c) Organisation, funding, staffing, and level of independence and authority			10(b) Private sector's organisation and access to the public procurement market		12(b) Coordination of controls and audits of public procurement
	1(f) Evaluation and award criteria	5(d) Avoiding conflict of interest		10(c) Key sectors and sector strategies	12(c) Enforcement and follow-up on findings and rec.		
	1(g) Submission, receipt, and opening of tenders	6. Procuring entities and their mandates are clearly defined.		6(a) Definition, responsibilities and formal powers of procuring entities			12(d) Qualification and training to conduct procurement audits
	1(h) Right to challenge and appeal		6(b) Centralized procurement body		13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals	



Pillar I		Pillar II		Pillar III	Pillar IV	
	1(i) Contract management	7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology			13(b) Independence and capacity of the appeals body
	1(j) Electronic Procurement		7(b) Use of e-Procurement			13(c) Decisions of the appeals body
	1(k) Norms for safekeeping of records, documents and electronic data.		7(c) Strategies to manage procurement data		14. The country has ethics and anticorruption measures in place.	14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities and penalties
	1(l) Public procurement principles in specialized legislation	8. The public procurement system has a strong capacity to develop and improve.	8(a) Training, advice and assistance		14(b) Provisions on prohibited practices in procurement documents	
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures		8(b) Recognition of procurement as a profession		14(c) Effective sanctions and enforcement systems	
	2(b) Model procurement documents for goods, works, and services	8(c) Monitoring performance to improve the system	14(d) Anti-corruption framework and integrity training			
	2(c) Standard contract conditions		14(e) Stakeholder support to strengthen integrity in procurement			
	2(d) User's guide or manual for procuring entities		14(f) Secure mechanism for reporting prohibited practices or unethical behaviour			
3. The legal framework reflects the country's secondary policy objectives and international obligations	3(a) Sustainable Public Procurement (SPP)			14(g) Codes of conduct / codes of ethics and financial disclosure rules		
	3(b) Obligations deriving from international agreements					



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.

St. Kitts and Nevis enacted a Procurement and Contract Administration Act in 2012, but no measures have been taken to implement it or any of its provisions. This means that none of the assessment criteria in this pillar are met and a red flag has to be assigned to every indicator. Even if implemented, the Procurement and Contract Administration Act exhibits several gaps.

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.

Currently, St. Kitts and Nevis does not have a procurement law in force. The Finance and Administration Act (2007) does not provide a sufficient legal framework for public procurement. The Procurement and Contract Administration Act (2012), intended to regulate public procurement in St. Kitts and Nevis, has so far not been enforced. This means that none of the sub-indicators in this indicator are met. Once implemented, the 2012 Procurement and Contract Administration Act would represent a relatively complete legal framework for procurement. However, gaps would remain with regards to the choice of the procurement method, thresholds, participation rules, evaluation criteria, systems and tools to support procurement and specific regulations for more specialized areas, as PPP's and sustainable procurement.

Findings

The legal framework for public procurement in St. Kitts and Nevis is not clear. The absence of a procurement law creates an environment of uncertainty. Currently, the legal and regulatory framework for public procurement is not sufficiently organised. A Procurement and Contract Administration Act was enacted in 2012, but it is not in force. According to stakeholders, there are no regulations issued or appointments made to implement the act. This means that St. Kitts and Nevis lacks all of the provisions required in the assessment criteria of indicator 1.

There is no definition of procurement methods comprising competitive and less competitive procedures. De facto, public procurement in St. Kitts and Nevis is conducted using competitive quotations and single



source procurement for those processes that are funded by the national budget. Where international partners fund procurements, the procurement rules of these partners apply (i.e., multilateral development banks and foreign governments). There are no rules in place for the different stages of the procurement process and for contract management.

Even if the enacted Procurement and Contract Administration Act were in force, the specifications in this law would require further development to comply with indicator 1, particularly regarding the following:

- rules of participation,
- documentation and specification of the acquisitions,
- evaluation criteria and award criteria,
- right to challenge decisions from the procuring authorities,
- contract management,
- use of technology to support the procurement process, and
- specialised legislation for PPPs and concessions.

Substantive gaps

The fact that the existing law is unenforced represents a substantive gap. Procuring entities in St. Kitts and Nevis operate without legal basis, even though a law has been enacted. This creates uncertainty, presents a hurdle to efficient and effective public procurement processes, and ultimately represents an immense risk to public funds and public service delivery in St. Kitts and Nevis.

Gaps were identified in connection with the following aspects regarding procedural rules in the unenforced act:

- 1) specification of the content of tender notices;
- 2) rules on participation;
- 3) evaluation criteria including technical specifications;
- 4) the lack of procedures and mechanisms to ensure safety and confidentiality of the proposals;
- 5) absence of rules regarding SOE participation in the procurement process;
- 6) norms for safekeeping records and treatment of confidential information;
- 7) planning for the development of an e-procurement system; and
- 8) application of principles for specialised legislation for PPPs and concessions.

Finally, a major gap was identified in the rules for contract management, including contract amendments and the lack of an information system for public procurement system. The lack of general rules on contract amendments or renegotiations is a major gap because ex-post contract renegotiations are a major corruption risk.

Because no enforced legal framework is in place, basic public procurement objectives are jeopardised. Therefore, a red flag is assigned to this indicator.

Recommendations

St. Kitts and Nevis is strongly recommended to implement the 2012 Procurement and Contract Administration Act. As noted in discussions with government representatives, there is no material obstacle to implementing the Procurement and Contract Administration Act, because the Procurement and Contract Administration Act was already enacted. The Ministry of Finance, in charge of public



procurement, could take all necessary steps towards implementation of the Procurement and Contract Administration Act, such as:

- Calling the Procurement Board into operation.
- Developing and adopting implementing regulations and tools in support of the legal framework (see indicator 2).

As a next step, the Procurement and Contract Administration Act could be updated to include missing provisions, such as:

- 1) rules to restrict discretion that procurement entities and officials have in conducting the procurement process, resulting in minimal use of procurement methods that limit competition;
- 2) regulate the conditions for participation in public procurement, most notably general rules for qualification, eligibility and exclusions;
- 3) specifications of procurement documents using technical specifications, ensuring neutral treatment with regards to such specifications;
- 4) general provisions to ensure that, whatever evaluation criteria are used in competitive procurement methods, these criteria are objective and clearly defined in the procurement documents (including guidelines to assess quality);
- 5) improved regulations on how to submit tenders/proposals, specifying what information of tenders/proposals may be disclosed publicly and rules applicable to the data and records on tenders/proposals opening;
- 6) terms and conditions for the operation of the Administrative Review Body;
- 7) contract management provisions, including rules in case the value or term of the contracts are amended;
- 8) e-Procurement strategy; and
- 9) specialised legislation for PPPs and concessions.

Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions for contracts. 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.

Currently, there are no regulations and tools in support of the public procurement function.

Substantive gaps

There is no access to public information regarding public procurement in St. Kitts and Nevis and there are no regulations for public procurement in place. The assessors did not find evidence of the existence of supporting tools such as model procurement documents, standard contract conditions or a procurement manual. All of these findings represent serious gaps.

According to the unenforced 2012 Procurement and Contract Administration Act, the Ministry of Finance is responsible for developing and implementing supporting regulations in the area of public procurement.



Handbooks, model procurement documents and standard conditions are important in a procurement system to enhance transparency, to support procurement officers and to prevent legal disputes before they arise. Handbooks, model documents and standard contracting conditions communicate to bidders what the precise terms and conditions of a procurement opportunity are. This helps potential suppliers to prepare their participation. It also provides clarity on decision making by procuring entities and as a result, provides legal certainty to the market and manages expectations of businesses. On the side of the procurer, such documentation also supports officers in drafting documentation by offering a clear starting point based on which the procurement authority has to design and complete each process. Handbooks, models and standard documents are an opportunity to state legal views and give guidance and open recommendations to follow when drafting procurement documents, selecting the supplier, performing or liquidating the contract.

The absence of a regulatory framework puts the achievement of basic public procurement objectives at risk. Therefore, a red flag is assigned to this indicator.

Recommendations

The Ministry of Finance is strongly recommended to follow up on the above-mentioned enforcement of the Procurement and Contract Administration Act (indicator 1) by developing, adopting and publishing supporting regulations. These regulations are recommended to include detailed provisions to define processes and procedures. Model documents for the procurement of goods, works and services could be developed. In addition, standard contracting conditions could be established for the most common types of contracts, aligned with international best practice and available as part of the procurement documents. Finally, a user's guide could be implemented that details the correct procedures for the implementation of the procurement rules.

Given that these tasks are comprehensive, a strategic plan could be developed to structure the development of the implementing tools. This plan could prioritize the documents to be prepared and to identify the required resources to develop them.

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

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

Given the lack of provisions related to sustainable procurement and international obligations, this indicator is not met.

Substantive gaps

There is no reference in the 2012 Procurement and Contract Administration Act to Sustainable Procurement Policy or to international obligations of St. Kitts and Nevis as it pertains to the public procurement system. Sustainable public procurement can contribute to achieving environmental objectives, such as (i) control emissions of greenhouse gases; (ii) decreasing water usage; (iii) energy



efficiency; (iv) air, water and soil pollution; (v) waste reduction; (vi) sustainable agriculture; and (vii) control deforestation. The inclusion of Sustainable Procurement will support ongoing work in waste management, electronic waste, water conservation, reduction of greenhouse gas (GHG) emissions and the promotion of sustainable agriculture. Furthermore, sustainable public procurement may increase awareness of environmental issues within the country and establish a norm for the private sector and for the society at large.

The absence of sustainability considerations and any considerations of international commitments in the area of public procurement in the legal and regulatory framework represents an obstacle that might jeopardise the achievement of basic public procurement objectives. Therefore, the assessors assigned a red flag to this indicator.

Recommendations

The recommendation in this case is to develop a Sustainable Procurement Policy that envisions including sustainable criteria in the procurement process and identify obligations derived from international instruments to be included in the regulations.

3.2. Pillar II - Institutional Framework and Management Capacity

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

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

Rules of the institutions in the public procurement system are largely absent, except for limited, unenforced specifications included in the 2012 Procurement and Contract Administration Act. Taking the 2012 Procurement and Contract Administration Act into account, substantive gaps remain with regards to delegation of decision-making authority, the central purchasing unit, information systems, e-procurement and performance monitoring, as well as efforts to professionalise the public procurement workforce. A red flag is assigned to every indicator.

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. 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 affects risks of delays in payments and delivery.

There is no clear relation between financial management and procurement planning in the legal framework of St. Kitts and Nevis. There are no financial procedures defined for the procurement process, neither in the 2012 Procurement and Contract Administration Act nor in the Finance Administration Act. Procurement plans do not need to be prepared. There is no clear appropriation process for acquisitions.

Findings

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

At the level of the procurement process, there are no clear financial requirements either. The unenforced 2012 Procurement and Contract Administration Act contains a requirement to estimate the value of the procurement, but it is not linked to the availability of funds (section 11). The assessors did not find requirements related to the certification of availability of funds or a process to authorise payments and were informed about a considerable delay in payments to suppliers.

Several good practices exist: The Government of St. Kitts and Nevis has an Intelligent Treasury Management System (ITMS), which verifies the existence of funds before a purchase order is generated. The administration also has a procedure at the Ministry of Finance that serves to assess the compliance with requirements for procurement documentation before releasing funds for such procurement process. There is also a policy that requires settling of all invoices within 30 days unless the contract specifies otherwise.

Substantive gaps

In general, St. Kitts and Nevis does have financial management procedures for the procurement process. There are no rules linking procurement activity to financial management or financial planning. The legal and regulatory framework (beyond the un-enforced 2012 Procurement and Contract Administration Act) does not contain financial procedures or principles to be considered when organising a public procurement process. This is problematic as ambiguity over procedures results in uncertainty for suppliers and public officers can potentially create opportunities for corruption.

While these are good practices, there is no clear regulation to integrate the procurement system with the public financial management system. The absence of a process to govern financial procedures associated with the procurement procedures represents an obstacle that might jeopardise the achievement of basic public procurement objectives. Therefore, a red flag is assigned to this indicator.

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

Recommendations

The Government of St. Kitts and Nevis could define procedures to harmonise procurement rules and budget and expenditure regulations and integrate the existing good practices into the legal framework. This is to provide assurance of budget and cash flows to honour procurement obligations in accordance with the terms of every procurement document, before entering into contractual obligations.



Other procedures could be developed, for example a yearly procurement plan and tools to report its execution.

Through the Finance Administration Act 2007, the Government of St. Kitts and Nevis could develop regulations to ensure that procurement planning is linked with budgetary planning and procurement expenditure is linked with the national financial system of expenditure and payments.

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.

Currently there is no an institutional framework dealing with the normative and regulatory function of procurement.

There is an organisational structure in the unenforced Procurement and Contract Administration Act to address the normative and regulatory function, but its functions do not include all responsibilities defined by the MAPS.

Findings

Based on stakeholder interviews and the review of the documents reviewed, there are no specifications related to the normative regulatory function outside of the unenforced 2012 Procurement and Contract Administration Act. According to this Act, the Ministry of Finance, supported by the Procurement Board, is the entity responsible for the normative and regulatory function. The Procurement Board has five members:

- 1) the Financial Secretary,
- 2) the Accounting officer of the Ministry responsible for public works,
- 3) the Accountant General,
- 4) two other members appointed by the Minister of Finance.

The duties of the Procurement Board are operative duties related to

- 1) determining whether procurement should qualify as direct contract,
- 2) determining whether a threat to public health, welfare or safety gives the grounds for emergency procurement,
- 3) granting or refusing consent to award a contract based on whether the Procurement Board is satisfied that the procedure to award the contract was commenced in good faith;
- 4) suspending or debarring a person from participating in public procurement;
- 5) determining the course of action upon a breach of contract awarded by the Procurement Board; and
- 6) exercise the powers in respect of contract administration and any associated matters assigned to the Board.

The 2012 Procurement and Contract Administration Act, albeit not in force, does not establish responsibilities to advice procuring entities develop policies, to monitor procurement, or to gather,



administer and report on procurement data. Neither does it cover training programs nor a professionalization programme for public procurement officers.

Section 41 of the 2012 Procurement and Contract Administration Act refers to the accounting officer's obligation to report artificial division of procurements, failure to follow the rules set forth in the act, accepting or obtaining payments, gratuity or rewards in connection with a procurement or sharing confidential information. However, the Act does not contain a policy to manage conflicts of interest.

In accordance with the Finance and Administrative Act, the normative and regulatory functions are located at the Ministry of Finance bearing in mind that procurement implies public expenditure. However, no normative and regulatory functions have been used.

Substantive gaps

A substantive gap is identified because St. Kitts and Nevis does not have an institution in charge of the normative and regulatory function. Therefore, there are no basis for the institutional arrangement and no provisions to manage conflicts of interest.

The absence of responsibilities related to monitoring public procurement, procurement information, statistical data and procurement reports is a substantive gap. The clarity on who is responsible to provide advice to procuring entities is important for such entities and for the market because it makes any consultation process more efficient. It also clarifies which parties are able to intervene in the process to provide advice. The analysis of procurement data shows opportunities to improve procedures and behaviours in the procurement system and to monitor the compliance with the principles of the system and the effectiveness of policy interventions. Centralised online platforms are able to produce the data necessary to prepare reports and make statistical analysis.

Recommendations

The Government of St. Kitts and Nevis could establish a clear conflicts of interest management procedure and assess the need to separate operative from regulatory functions of the Procurement Board as a means to reduce institutional conflicts of interest.

The Ministry of Finance could use its normative and regulatory function to clearly assign responsibility to (i) provide advice to procuring entities, (ii) organise the procurement data system, reports and statistical analysis, (iii) train procurement officers and supporting the professionalization of procurement, and (iv) design and manage centralised online platforms.

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.

The Ministry of Finance launched a Procurement Board in 2009. A Central Purchasing Unit, mandated with procuring various supplies for the Ministries and Departments in central government, was created in January 2000. Definitions of procuring entities are included in the 2012 Procurement and Contract



Administration Act, which has not been implemented. Gaps remain particularly concerning the delegation of decision-making authority.

Findings

Similar to other indicators, rules related to procuring entities are included only in the unenforced 2012 Procurement and Contract Administration Act. This Act defines procuring entities and its responsibilities; however, no specific competencies are defined. There are no rules related to the delegation of decision-making authority associated with the risks and value of the acquisitions.

Section 7 of the 2012 Procurement and Contract Administration Act states that:

- 1) the Director of Public Works manages the procurement of works, heavy equipment, tools and services related to architecture, engineering and land surveying;
- 2) the Manager of Procurement in the Ministry of Finance manages the procurement of goods (tangible and intangible personal property as well as services incidental to the supply of goods if the value of those services does not exceed the value of the goods); and
- 3) For specific items, the accounting officer manages the purchasing directly for the respective requiring ministry, department or entity. Items to be purchased directly include food, pharmaceuticals, vehicles, explosives, firearms, petroleum products, water equipment and fixtures, restricted goods pursuant to the Customs, Control and Management Act and other goods that the Minister of Finance by order may prescribe.

In 2000, a Central Purchasing Unit was created in the Ministry of Finance to ensure that the government benefits from volumes discounts and economies of scale. The 2012 Procurement and Contract Administration Act does not make reference to the Central Purchasing Unit, which may result in a conflict of competencies (see Indicator 9).

In accordance with the PEFA report, several institutions across the St. Kitts and Nevis administration operate separately but coordinate occasionally in a procurement board. The involved institutions include the Procurement of Public Works Unit, the Utilities Department at the Ministry of Public Works and several Central Procurement Units and other units in other ministries (PEFA Report 2009, PI-19 Competition, value for money, and controls in procurement pages 59 and 60).

Substantive gaps

The lack of rules related to the delegation of the decision-making authority is a substantive gap. Procurement officers, suppliers need to know the level of authority of each of the officers working in a procurement process. Any delegation could take into consideration knowledge and expertise; a lack of clarity results in legal uncertainty and may be the origin of misinterpretation and corruption.

Another gap is the absence of a clear accountability regime for the Procurement Board; this is related to a lack of delegation rules. If there is no clarity on the responsibilities, there is no accountability.

Recommendations

The Ministry of Finance could evaluate and reinforce the status of the Central Purchasing Unit and re-launch it with a clear plan involving the use of framework agreements.

Further, the Ministry of Finance could regulate how decision-making authority is delegated.



The Government of St. Kitts and Nevis could define an accountability policy for procuring authorities regarding the procurement function.

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

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

St. Kitts and Nevis does not have a public procurement information system or information policy. There are some requirements to gather information and data, but these are restricted to retaining some information with no obligations related to developing and maintaining an information system. E-procurement has not yet been implemented and the government has not made plans to do so. There is no strategy to manage procurement data and to make it accessible to the public.

Substantive gaps

The use of electronic platforms enhances transparency, reduces time, decreases paper consumption and guarantees equal access to interested parties. Such tools facilitate and support the analysis of the data for government, market agents and civil society. Therefore, there is a substantive gap related to the absence of the use of technology to support a public procurement information system, the absence of a responsible agent to develop the information system, promote and develop e-Procurement tools and to gather, manage and use procurement data to improve the performance of the procurement system. The absence of an information system represents an obstacle that might jeopardise the achievement of basic public procurement objectives. Therefore, a red flag is assigned to this indicator.

Recommendations

The Government of St. Kitts and Nevis may benefit from a well-structured public procurement information system having clear information on the type of goods, works and services acquired, the time of the year in which there is more or less activity, the level of competitiveness in the process, amongst others. The suppliers may benefit as well, because they are able to anticipate when and how to prepare tenders, completing documents and making supply arrangements to be able to lodge robust and competitive proposals. The Ministry of Finance could task an entity with planning the development of an information system for the procurement process. This could include an open procurement policy to gather and use information of procurement procedures, the development of e-Procurement tools and the definition of a strategy to analyse and use procurement data. In the region, solutions exist that could provide the basis for an e-procurement system specific to St. Kitts and Nevis, for example the CARICOM's Public Procurement Notice Board.



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.

None of the sub-indicators in this indicator are met, as St. Kitts and Nevis lacks structured training programmes and performance monitoring systems and does not recognise procurement as a profession.

Findings

There is no a structured training program in place or a support structure for the procurement officers.

St. Kitts and Nevis' public procurement system does not recognise procurement as a profession.

Finally, there is no system in place to monitor performance; this might be the consequence of not gathering structured data.

Substantive gaps

Major gaps relate to the absence of a system to support the professionalization of the procurement function. There are no extensive training and evaluation procedures for procurement officers and no other support systems exist. The lack of training programs and support for the professionalization of the procurement function is a substantive gap. Professional procurement teams create value for money and support effectiveness in public expenditure. This is why over the past 15 years, countries have identified it as a good practice to establish specific public procurement teams or allocate a dedicated procurer to a team with an otherwise more general focus. This allows these teams to acquire specialised knowledge and skills that are identified through research, education and training. A professional procurement workforce could also be governed by codes of ethics or codes of conduct, with a commitment to competence, integrity and the promotion of public interest. The system will improve if the officers are better trained and motivated.

Another gap is the absence of procedures to monitor the procurement system as a means to developing the system. The existence of indicators of the public procurement system allows an understanding of how the system is working and allows designing and undertaking initiatives to comply with the objectives of the system when it has not been achieved.

These gaps represent obstacles that might jeopardise the achievement of basic public procurement objectives. Therefore, a red flag is assigned to this indicator.

Recommendations

The Government of St. Kitts and Nevis could design a procurement information system and establish indicators to monitor it. In doing so, the government could evaluate what kind of data points can be most easily gathered. Any effort to create a performance monitoring system could be closely linked to efforts in the area of public procurement.

The Ministry of Finance could work with other countries in the region to organize a professionalization programme for the procurement function, for example through its membership in the Inter-American Network on Government Procurement and its Caribbean sub-group. By tackling such a challenge together,



the different governments can learn from the good practices of their “neighbours”, and also reap financial benefits by consolidating demand and access to training services.

3.3. Pillar III - Public Procurement Operations and Market Practices

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

Procurement practices in St. Kitts and Nevis evidence substantive gaps compared against the assessment criteria. Most procurement is being carried out through restricted tendering. There is a general lack of planning. Bid evaluation and contract negotiations are untransparent and seem open to influence. Most of the procurement documents are confidential, information about procurement is not easily accessible and participation of external stakeholders is low.

The private sector is fairly well organised in associations. While no formal mechanism for dialogue with suppliers or potential bidders exists, the Government of St. Kitts and Nevis regularly engages the private sector with regards to the economic development of the state. New entries to the procurement market are difficult.

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.

St. Kitts and Nevis has substantive gaps related to this indicator that may impede the country’s achievement of general public procurement objectives. According to the reviewed case files accessible to the assessors, gaps relate to the planning, selection and contracting, and contract management stages. A red flag is raised for the selection process, as the current legislation is not being enforced; restricted tendering and fractioning are occurring often. Decisions of the technical evaluators are being overruled.

Findings

The assessors were provided brief access to physical files during the in-country visit of two projects of the Ministry for Sustainable Development and two projects of the Ministry for Public Works. The choice of procedures to follow was taken by the stakeholders. Three out of four files pertained to procedures conducted under St. Kitts and Nevis’ procurement procedures; one was conducted under CDB rules. Although digital files seem to be used at times and were requested by the assessors for review, no tender documents were sent after the mission, which impeded a complete assessment of this indicator. Thus, the references to tender documents in this indicator should be understood as a report of the information



identified in the few files to which the assessors had limited access in the manner of a “spot check”, and without prejudice to other procedures that the assessors did not have access to.

The reviewed case files show no indication of adequate needs analysis and market research. One of the processes significantly underestimated the project budget, which at the award stage resulted to be more than double the original estimate. For large infrastructure projects such as a bus terminal, site meetings were set up mostly to speak about the project location and other related aspects. These were the only opportunities for involvement by external stakeholders in the procurement process.

The requirements and desired outcomes were well defined in those processes that related to open tenders. Open tenders, however, are the least common procurement method, according to interviews. The tender documents analysed do not contain any sustainability criteria. While not standardised, the tender documents analysed are proportionate to the need and contain the necessary appendixes related to a public works project, such as description of needs, maps and bills of quantities. Contracts for the relatively large public works use FIDIC templates.

The examined tender documents contained the procedures and times for bid submission and opening. Nevertheless, even for public tenders, participation of external stakeholders is not allowed. The opening of bids remains confidential. The unenforced Procurement and Contract Administration Act allows for the public to attend bid openings.

Those documents that relate to open tenders include scoring criteria that go beyond price and take into account aspects such as the time to complete a public work. Nevertheless, negotiations are sometimes undertaken and can delay contract implementation. In one of the processes, related to the construction of a bus terminal, negotiations to reduce the time for delivery were conducted with the supplier that bid the lowest price. After negotiations were completed, a contract was signed with this supplier, although the time for delivery was equivalent to that of another bidder, which had a better price. One of the processes took several years to be completed. Procurement officers interviewed also stated that in some open tenders, the evaluators’ decision has been overruled by higher levels in the institutional hierarchy.

The 2012 Procurement and Contract Administration Act allows for pre-qualification, but as the regulations are missing, multi-stage procedures are not currently in use, according to information from stakeholders and confirmed by the reviewed case files.

The persons interviewed mentioned that fractioning is common, despite legal prohibition to do so. One example provided by stakeholders relates to a road construction project, which was divided into segments. Local suppliers were invited to bid for each part.

There are central purchasing units in both St. Kitts and Nevis for items such as computer, ink cartridges, furniture, office supplies that carry out bulk purchases, after consolidating requirements from entities. These units do not use open tendering, not even for the largest processes. The procurement method used is restricted tendering inviting three suppliers. This method is the main one used in both St. Kitts and Nevis, where contracting entities ask for quotations through email or phone and do not use complete procurement documents.

According to stakeholders, in restricted tendering, procurement officers ask for quotes, but consider several aspects, which are not mentioned beforehand to the potential suppliers. Often, the final decision



is at the discretion of the individual procurement official, for example in the Central Purchasing Unit of St. Kitts.

Suppliers interviewed mentioned that contract awards are not being announced and stated that they would like to have information at least of the price at which a process was awarded, which is currently not being disclosed. The Central Purchasing Unit on St. Kitts does not disclose the winning supplier, not even to the bidders participating in the restricted process.

Contract management is not performed according to common guidelines. Some procuring entities, like the Central Purchasing Unit on St. Kitts, perform a random check on goods received before proceeding to pay. According to suppliers interviewed, payments are not always done on time. The contract concerning the Tabernacle Centre had delays in its execution. There was no evidence of contract amendments carried out to set new conditions.

Procurement documentation is recorded on paper and files are neither complete nor easily accessible. None of the processes analysed had complete information in the file. The bids were not included in the file. The St. Kitts and Nevis MAPS coordination team informed the assessors that procurement statistics are not available, as the government does not have a procurement information system.

Substantive gaps

There are substantive gaps related to the planning of the procurement processes. From the files reviewed, there is no evidence that a clear market analysis is being undertaken and that the choice of sourcing strategies is informed by any such analysis. Procurement officials mostly limit the process to asking for quotes from suppliers with whom they have previously engaged with, and thus do not promote further competition nor understand the current trends and characteristics of the supply side of the market. This approach promotes a risk of procuring goods and services without the best value for money, and incorrectly estimating budget needs.

In the files accessible to the assessors, tender documents were not standardised and did not include sustainability criteria. Multi-stage procedures are not being used in St. Kitts and Nevis. For restricted tendering, quotes are asked for without using procurement documents.

The legislation is not being enforced due to a lack of accompanying regulations. Restricted tendering is widespread. Fractioning of contracts is frequent. The selection and award process is not being carried out in an effective, efficient and transparent way. The technical decisions of evaluators are sometimes overruled. These aspects make it necessary to raise a red flag, as these issues cannot be mitigated.

Negotiations after bid evaluation are conducted without a common framework, delaying the implementation of the contract and not achieving the best value for money. Value for money is not optimised either in restricted tendering as the award decision is at the discretion of the procurement officer. Furthermore, contract awards are not being publically announced.

At the contract implementation stage, there is no evidence of complete supervision of the contract being carried out in a standardised manner by procuring entities. Quality control measures do not seem to be in place, there are some delays in payments reported by suppliers. Contract amendments are not issued on time.



Opportunities for direct involvement of relevant external stakeholders in public procurement were not utilised in the cases reviewed. Information about procurement processes is very limited, including contract award information. The only time when some involvement takes place is at the site meetings of public works procurement. External stakeholders do not take part at the moment in bid opening meetings or contract monitoring.

Procurement information is recorded on paper and files are not complete nor easily accessible. None of the processes analysed had complete information in the file. The bids were not included in the file. Procurement statistics are not available and decisions to modify the procurement system are not based on data.

Recommendations

Attention could be made to strengthening the planning stage of the procurement process. With this objective in mind, the Government of St. Kitts and Nevis could consider creating standard documents (including for restricted tendering), producing guidelines about market research and providing the necessary training for public officials involved in procurement transactions. Topics of the trainings could include early engagement with the private sector, budget estimation, sustainability aspects, and contract management, amongst others.

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

The contract clauses could be disclosed along with the tender documents. Negotiations after the bidding phase could be limited. This would improve the timeframes for implementing contracts and provide a fairer ground for bidders.

The Government of St. Kitts and Nevis could consider how to enforce the current Procurement and Contract Administration Act and draft the accompanying regulations with this goal in mind. Particular attention could be paid to reducing the fractioning of contracts and explaining to procuring entities the consequences of fractioning.

Introducing some type of e-Procurement such as the CARICOM's Public Procurement Notice Board would greatly improve record keeping and boost transparency in the procurement process. This could be accompanied by the disclosure of awards, which is also possible through the CARICOM Notice Board. Such a system could allow for the calculation of some statistics to help inform the government and guide reform for improving the public procurement system.

Finally, to ensure that procedures are being followed correctly, citizens and suppliers could be allowed to be present at milestones such as the opening of the bids for any competitive process.

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.

There are private sector organisations in the islands. However, the comparison with the MAPS assessment criteria highlights substantive gaps. There is no formal dialogue between the government and the private sector about procurement. Suppliers voiced concerns about unequal access to the public procurement market and lack of sector strategies.

Findings

The private sector has organisations such as the St. Kitts and Nevis Chamber of Industry and Commerce. The government does not have a register of suppliers. Many products are being sourced from abroad as there are many goods and services, which are not produced in the islands. As stated by stakeholders, some suppliers have lost interest in public procurement because the government engages most of the time with the same suppliers and new entries into the public procurement marketplace are rare.

The Chamber of Industry and Commerce affirmed that they are sometimes consulted when acts that affect them are being prepared, but there are no suitable dialogue mechanisms in place to receive comments from suppliers and provide feedback. In addition, there are no regular training programmes in place to build capacity among suppliers, and the only sessions conducted have targeted incumbent suppliers.

The private sector perceives constraints related to the fairness of the public procurement system. They find that information is scarce especially about how, to whom and for what price contracts are awarded. Furthermore, they see that market opportunities are not open to many suppliers and perceive that the government only engages with a limited set of suppliers. Suppliers stated that according to their experience, payments are not always made on time.

Foreign suppliers find it difficult to participate in the procurement market because of the lack of information that can be accessed from abroad, and they must have a local branch or partner to be able to participate in some processes such as those carried out by the Central Purchasing Unit of St. Kitts.

Public works is one of the main sectors described as important by government officials, but no formal document has been drafted for developing targeted procurement strategies.

Substantive gaps

Substantive gaps persist because the government is not encouraging an open dialogue with the private sector about procurement reform. There are no established mechanisms for dialogue nor a clear consultation process. In fact, there was no consultation with the private sector concerning the 2012 Procurement and Contract Administration Act.

There are no regular training programmes in place for suppliers. As only incumbent suppliers are usually targeted by the ad hoc training sessions, no new entries to the public procurement system are promoted, especially for foreign suppliers. In any case, knowledge of possible new suppliers is poor because there is no registry of suppliers.



As reported by suppliers, according to their experience, some are not willing to participate in public procurement because they feel that the government engages most of the time with the same set of suppliers. The private sector perceives constraints related to the fairness of the public procurement system. They find that information is scarce and there is not enough information about how, to whom and for what price are contracts awarded. Furthermore, stakeholders felt that market opportunities were not open to many suppliers and perceived that the government would only invite a limited set of them. In addition, according to suppliers, payments were not always made on time.

A substantive gap persists because key sectors have not been included in any appropriate document for developing targeted procurement strategies. As sectors are not identified, there is no assessment of risks and opportunities.

Recommendations

The Government of St. Kitts and Nevis could take steps to increase the engagement with the private sector associations present in the islands to reach out to suppliers and promote an open dialogue especially regarding procurement reform. A focused engagement regarding procurement will become even more necessary once the procurement regulations are drafted. Regular spaces for discussion could be created to understand the needs and requirements of both the public and private sectors.

To better understand the supplier ecosystem, it is advisable to promote the use of a register of suppliers for both St. Kitts and Nevis. Information from this register could also serve as an input to better scoping important sectors, assessing risks and opportunities associated to them, and ultimately crafting sound procurement strategies for each one of these. It could also be utilised to reach out to new suppliers when training is offered. Having more suppliers in the public procurement system would help the Government of St. Kitts and Nevis in achieving better value for money in its contracts.

Contracting information could be more open, including that related specifically to the award of contracts. As recommended in the previous indicator, some use of e-procurement such as the CARICOM's Public Procurement Notice Board would greatly increase competition and transparency both for local and foreign suppliers.

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

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

There are no dialogue mechanisms and de facto no civil society engagement about the public procurement system in St. Kitts and Nevis.



While institutions for audit exist, some gaps remain, pertaining to some legal provisions and challenges in implementation. Audits are not regularly carried out. The Public Accounts Committee is not operating.

The 2012 Procurement and Contract Administration Act, although unenforced, contains provisions for review procedures, following in general international good practices. There have been no requests for review submitted.

Finally, with regards to anti-corruption measures, St. Kitts and Nevis is one of the few countries that have not ratified the United Nations Convention against Corruption. Some institutions and tools are used, but to a limited extent. The Integrity Commission, a central institution with regards to integrity in St. Kitts and Nevis, is 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 three sub-indicators of this indicator show substantive gaps that evidence the difficulties of civil society to engage in public procurement.

Findings

Stakeholders interviewed pointed to the confidentiality of documents as a constraint to having access to public procurement information. Stakeholders, other than the suppliers who are invited to restricted tendering procedures, do not learn about what the government is procuring. Only participating bidders have information about the awarding of contracts. Civil society is not able to participate at this stage of the procurement process. Furthermore, there are no dialogue mechanisms between public institutions and civil society about procurement matters.

The Procurement and Contract Administration Act allows the public in general to be present at bid openings, but the legislation is not being enforced. There are no other provisions related to citizen participation in other stages of the procurement cycle in the current legislation.

Citizen participation is limited to site meetings of processes for contracting public works. Nevertheless, there is no documentation thereof.

Substantive gaps

There are substantive gaps as there is no evidence of dialogue with civil society or involvement in the public procurement reform process, nor are there any programmes to build capacity of stakeholders to understand, monitor and improve public procurement.



There is a substantive gap in the adequate and timely access to information, which is impeding effective participation from stakeholders in the public procurement market.

In addition, the unenforced current legislation only provides for citizen participation during bid openings but does not mention other stages of the procurement cycle. Furthermore, actual practice shows that there is no evidence of direct participation of citizens in the procurement process, except for meetings on the construction site carried out for planning public works, which are not documented in the procurement records.

Recommendations

As was suggested in indicator 10, the government could consider creating spaces for discussion with citizens, including at the opening of bids and during contract implementation. For this, training is essential to explain the basics of public procurement and build capacity for monitoring and improving public procurement. As these programmes have never been carried out in the islands, international partners could be involved, such as the CDB or similar organisations.

Legal reforms could be considered, as the Procurement and Contract Administration Act does not allow for citizen engagement and open contracting. Confidentiality could be kept only at certain instances of the process, but general documents and milestones could be disclosed to enable stakeholder participation.

Indicator 12. The country has effective control and audit systems

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

The country has audit systems in place, but these have considerable weaknesses. Gaps were identified for all the sub-indicators. Red flags are raised because the Public Accounts Committee is not operating, and the audit office is not adequately staffed.

Findings

The Government of St. Kitts and Nevis did not share with the assessors the latest PEFA draft report (2016) because the document has not been approved. Most of the information to assess this indicator was provided by the acting Director of Audit.

External audit in St. Kitts and Nevis is conducted under the responsibility of the Director of Audit, as established in the Audit Act of 1990. In addition, the Internal Audit Division, a dedicated unit in the Ministry of Finance, is responsible for internal audit of all ministries in St. Kitts and Nevis. Both the Director of Audit and the MOF’s Internal Audit Division coordinate their activities in an operational plan, ensuring that efforts are streamlined. General external and internal audits are carried out annually but do not cover the whole of government. Many statutory bodies have not undertaken audits in several years. It remained unclear how audits are targeted.



Internal control is not in place and there is no regular audit focusing on procurement. Internal audit of the procurement function was done once, relating to the procurement of a hospital. External audit of procurement of the renovation of a school carried out by the Ministry of Community Development, Gender Affairs and Social Services implemented under the CDB Basic Needs Trust Fund (BNTF) Programme is being carried out at present. In both cases, the audits are compliance audits and do not consider effectiveness or efficiency of the procurement operations.

Procurement audits have never been submitted to the Public Accounts Committee. There are two audit offices, one for St. Kitts and one for Nevis. Each submits annual financial reports to the Parliament. The revision of expenditures is not thorough and does not review procurement. In addition, according to the Acting Director of Audit, there has not been a debate in Parliament during her tenure about the external audit report. The Public Accounts Committee is not operating.

The Acting Director of Audit affirmed that some auditors received training in 2017 undertaken by the Caribbean Association of Supreme Audit Institutions (CAROSAI) in Jamaica on compliance audits of procurement. Beyond this training, training is not carried out on a regular basis.

A benchmark for correct procedures is missing, because the current legislation is not enforced. The Director of Audit gives two weeks for the auditee to review and respond to the findings of the audit. The Audit Act does not establish time frames for implementation. Follow-up on recommendations of each audit reports is conducted as part of the next audit during the following year. The Acting Director of Audit affirmed it is challenging to complete audits given the small workforce. The Human Resource Department (HRMD) has been made aware of the vacancies that exist for senior staff

Substantive gaps

St. Kitts and Nevis does not have legal provisions regulating internal control and audits. Internal control mechanisms are not in place and audits are not being carried out regularly for all government institutions, especially for statutory bodies.

Regular audits about procurement are not carried out. When they are conducted, these are mostly compliance checks, and do not consider the effectiveness or efficiency or risks of the procurement operations. Adding to this, procurement audits have never been submitted to the Public Accounts Committee, which is not operating. This constitutes a red flag: without a working audit function, basic public procurement principles cannot be attained; the efficiency and effectiveness of public procurement procedures cannot be verified

In addition, there is no evidence of clear reporting lines to relevant oversight bodies, nor regular training programmes in place to train auditors. The management of human resources for the office of the Director of Audit is not performing well, constituting a red flag.

Recommendations

St. Kitts and Nevis could consider enacting legislation related to internal control and internal audit. This legislation could define the reporting lines to oversight bodies. It could also establish internal control mechanisms and risk mitigation in the procurement function to be put in place in procuring entities. It is suggested to create guidelines and provide training to officials and auditors about the provisions of this new legislation to ensure that it will be used in practice.



Efforts could be made to complete audits which include procurement for the whole of government, including statutory bodies. The Public Accounts Committee must be put into operation so that the reports of the Director of Audit are followed up. In addition, the Procurement Board must be put to operation to carry out the annual assessment of procurement and contract administration.

An audit manual could be created to guide auditors on the procedures to undertake audits and to ensure that they are carried out consistently, regardless of the person appointed to audit a specific institution. These procedures could include performance, effectiveness and efficiency checks, in addition to a compliance revision.

Finally, it is suggested that the Human Resources Department acts to fill the vacancies in the office of the Director of Audit, for it to complete its work.

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.

St. Kitts and Nevis has a process for challenges and appeals specified in legislation, which in theory complies with the assessment criteria. The remaining sub-indicators have gaps and a red flag is raised because the legislation is not being enforced.

Findings

The 2012 Procurement and Contract Administration Act contains specifications for challenges and appeals; however, this Act has not been enforced. The Act provides procedures for lodging an appeal. Following the first level of appeals with the procuring entity, further complaints can be filed with the Administrative Review Board and then the High Court. However, this act is not enforced and no challenge has ever been submitted neither to the administrative nor to the judicial bodies, as was confirmed by the Attorney General Chambers. According to the Attorney General Chambers, challenges, should they occur, may be filed directly to the High Court, as the Procurement Board is not operating.

According to the Procurement and Contract Administration Act, the Administrative Review Board's decisions are final. These may be appealed in the judiciary, in a process that begins at the High Court, and may be appealed at the OECS Court of Appeal. The Judicial Committee of the Privy Council in the United Kingdom handles final appeals.

The time frames are specified in the Act and include suspension of procedures.

According to the Act, the Minister of Finance appoints the three members of the Administrative Review Board, but this task does not preclude any involvement in procurement transactions. This is a potential institutional conflict of interest.

There is no provision in the Procurement and Contract Administration Act stating fees for the Administrative Review Board. As for judiciary cases, the Eastern Caribbean Supreme Court (Court Proceedings Fees) Rules of 2018 consolidate the fees payable in respect of Court proceedings, including



fees payable in the Court of Appeal in respect of civil and criminal proceedings. The Judicial Committee of the Privy Council (JCPC), as Court of the final appeal, has its own fees (Appendix to the Judicial Committee Rules 2009), but no cases have been identified that have reached that instance.

The Administrative Review Board may impose remedies, but it is not operating, because there have been no complaints and the Procurement and Contract Administration Act is not being enforced because of lack of regulation. The judiciary cannot impose remedies before the award of the contract.

Finally, Section 36 of the Procurement and Contract Administration Act specifies that the decision of the Administrative Review Board must be promptly made available for the public but does not specify any concrete time frame or location for doing that. The decisions of the Court of Appeal and the JCPC are available online.

Substantive gaps

There are some gaps including the fact that the Procurement and Contract Administration Act is not being enforced, which constitutes a red flag as it jeopardises the achievement of basic public procurement goals, due to a lack of accountability. In addition, there is no impediment for the Minister of Finance to appoint members in the Administrative Review Board, which have been involved in the procurement transactions. The current legislation does not specify any time frames for publishing the decisions of the Administrative Review Board.

The judicial process is not free and cannot impose remedies before the award of the contract.

Recommendations

The provisions specified in the 2012 Procurement and Contract Administration Act could be implemented, including those relating to the appeals mechanism. As this function also rests on sufficient demand, the review procedure could be explained to suppliers so that they understand and are able to use it. Aside from awareness raising, care should be taken to ensure a fair and due process that provides suppliers with the confidence that they can use the appeals procedures without fear of disadvantages in the next procurement procedure.

Regulations to the Procurement and Contract Administration Act could establish rules for appointing the members of the Administrative Review Board that impede persons who were involved in the procurement transactions to be selected. These regulations could also establish a clear time frame for decisions of this Board to be made public, and a place to publish those, preferably online.

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.

The ethics and anti-corruption measures in St. Kitts and Nevis have serious gaps when analysed against the assessment criteria. Red flags are raised because of the lack of the following: enforcement systems, a



functioning Integrity Commission, civil society organisations capable of monitoring procurement, and secure mechanisms for reporting prohibited practices.

Findings

St. Kitts and Nevis ratified the Inter-American Convention against Corruption in 2004 and has been a member since 2010 of the Mechanism for follow-up on the implementation of the Inter-American Convention against Corruption (MESICIC). The country is one of the few that have not ratified the United Nations Convention against Corruption.

The main pieces of legislation related to fraud and corruption are the Statutory Rules and Orders of 2014 and the Integrity in Public Life Act of 2013. These include provisions on offences and conflict of interest, and the need to act with integrity, impartiality and honesty. In addition, the 2012 Procurement and Contract Administration Act, although unenforced, defines offences and prohibited practices in procurement. Several assessment criteria in indicator 14 are provided in these laws, such as individual responsibilities, provisions on conflicts of interests, sanctions for offenses, and prohibited practices.

The Procurement and Contract Administration Act establishes the possibility for the Procurement Board to debar a supplier according to the corresponding regulations. As the regulations do not exist, no procedure is established. Furthermore, as has been mentioned, the Procurement Board is not operating. Some procuring entities interviewed indicated that suppliers are being excluded from the procurement market at the discretion of public officials in charge of procurement in the entities and are not invited to new procurement processes.

St. Kitts and Nevis has a number of institutions with responsibilities related to the anti-corruption framework: the Royal Saint Christopher and Nevis Police Force, the Attorney General's Chambers; the Office of Director of Public Prosecutions; the Director of Audit; the Magistrate's Department; the Ombudsman; the Accountant General; the Ministry of Finance; and the Integrity Commission. In addition, there is also a Public Service Commission with disciplinary functions. The prevention and detection of corruption are not assigned to any institution. These bodies are operational but some gaps remain.

For example, the Integrity Commission is not operating. According to the law, the commission is tasked with core responsibilities in the anti-corruption framework, such as processing declarations of income, assets, liabilities and private interests, and investigations related to bribery, corruption and other prohibited practices under the Integrity in Public Life Act.

The MESICIC 2015 report suggests a number of recommendations to make the framework operational, but none of these seem to have been implemented. Recommendations include increasing the resources dedicated to training, providing technological tools and inter-agency coordination schemes, and developing written guidelines, among others. In addition, St. Kitts and Nevis could prepare and publish statistical data about corruption prosecutions, investigations and proceedings.

The Integrity in Public Life Act creates the obligation for certain high-level officials to fill and hand in declarations of income, assets and liabilities. The same act establishes a Code of Conduct for high-level officials but has no provisions for officials involved in procurement. The Code of Conduct is mandatory and consequences of breaching it are criminal.



Regarding external stakeholders, the 2015 MESICIC report states that St. Kitts and Nevis has not yet considered and adopted measures to maintain and strengthen mechanisms for consulting civil society and nongovernmental organisations to issue proposals to deal with corruption. There are no civil society organisations for social audits and monitoring of government contracts. As for the private sector, the interviewed suppliers affirmed that they do not have any internal compliance measures in place.

Finally, persons interviewed affirmed that there are no integrity training programmes offered for government officials.

Substantive gaps

There are substantive gaps, foremost related to the anti-corruption legislation. The Integrity in Public Life Act, which includes provisions related to the Code of Conduct, offences, conflict of interest and declarations of income, assets and liabilities, only covers high-level officials and does not cover all the officers who could be involved in procurement operations (such as those in the Central Purchasing Unit) nor suppliers. The legislation does not include any cooling-off period for former public officials, nor provisions for prohibited practices in procurement documents. As a consequence, the procurement documents do not include any such provisions.

St. Kitts and Nevis has no debarment system in place. It is the perception of some procurement entities and suppliers that perspective bidders are being excluded from the process at the entities' own discretion.

There is no evidence that the laws on prohibited practices are being enforced. The institutions in the anti-corruption framework are not coordinating their work and face a number of challenges related to capacity, training and procedures that do not allow the framework to be fully operational. The Integrity Commission is not operating. Prevention and detection of corruption and other prohibited practices are not assigned to a specific institution. Thus, a red flag must be raised, as the lack of anti-corruption measures cannot provide for effective and efficient public procurement.

St. Kitts and Nevis lacks all of the following: statistics on corruption-related proceedings and convictions; special measures for the detection and prevention of corruption associated with procurement; and integrity training programmes offered for public officers.

Neither civil society nor the private sector are supporting the improvement of integrity. There are no civil society organisations with a focus on exercising social and audit control; nor internal compliance measures adopted by the private sector. These issues cannot be mitigated directly or indirectly and thus constitute another red flag for this indicator.

Regarding secure mechanisms to report prohibited practices, there is no evidence of secure and confidential channels for reporting cases of prohibited practices; provisions to protect whistle-blowers; nor a system to follow up on disclosures related to prohibited practices. Hence, a red flag must be raised for these topics.

Recommendations

It is advisable to strengthen the anti-corruption measures of the Integrity in Public Life Act. This Act (or specific guidelines) could cover all the officials involved in some way in procurement transactions. In addition, it could establish a cooling-off period for former public officials to avoid conflicts of interest. Furthermore, it could set the obligation for including provisions about prohibited practices in tender



documents and contracts for suppliers to understand the consequences of engaging in such practices. As mentioned in indicator 9, the development of standard tender documents is advisable, and these could include these provisions.

Legislation could also create secure mechanisms to report prohibited practices and measures to protect whistle-blowers and to follow up on disclosures related to prohibited practices.

The regulations for the Procurement and Contract Administration Act could create a debarment procedure. Suppliers may only be excluded from participating in the public procurement market as a consequence of this debarment procedure, which should be based on objective criteria. There could be means of complaining or appealing the decision. In any case, for this to work the Procurement Board must become operational.

St. Kitts and Nevis could consider revising the current anti-corruption framework under the recommendations of the MESICIC 2015 report. The Integrity Commission must be put to operation, and the prevention and detection of corruption, as well as the calculation of related statistics and offering of training to public officials could be assigned to this institution. For this to work, the necessary budget and human resources must be allocated.

The dialogue mechanisms suggested under indicators 10 and 11 could include integrity and anti-corruption aspects. It would thus be advisable to have guidelines and training for citizens and suppliers about the anti-corruption measures in place in the country and how to participate in contract monitoring and allow for feedback from their part to improve the system. Suppliers could be motivated through the existing private sector organisations to utilise internal compliance measures.



4. Consolidated Recommendations

Enforce the Procurement and Contract Administration Act.	Incorporate sustainable development and international commitments in the public procurement regulation.	Use electronic files for procurement processes and disclose awards.	Update the Procurement and Contract Administration Act to include missing provisions.
Call the Procurement Board into operation.	Harmonise procurement with budget and expenditure regulations.	Improve planning stage, create standard tender documents and disclose contract clauses at the start of the tender.	Improve capacities of the office of the Director of Audit and the Integrity Commission.
Develop and adopt implementing regulations and tools to support the legal framework.	Design and adopt an e-Procurement strategy.	Engage suppliers in a dialogue with government and consider using a supplier register.	Enforce the challenge procedure with an independent Administrative Review Board.
Draft internal control procedures.	Increase the use of competitive methods and limit contract fractioning.	Train citizens on basic aspects of procurement or provide corresponding guidelines.	Create a debarment procedure, reporting mechanisms, train public officials on integrity topics.

Several recommendations across this assessment touched upon the legal and regulatory framework. Given that a relatively complete law for public procurement has been adopted with the 2012 Procurement and Contract Administration Act, enforcing this act could be a priority. Necessary steps towards implementation include:

- Calling the Procurement Board into operation.
- Establishing the Administrative Review Board.
- Developing, adopting and publishing implementing regulations and tools in support of the legal framework.

Supporting regulations and tools could include model documents as well as standard contracting conditions for the most common types of contracts. These could be made available with the procurement documents. Procedures to be developed could also aim at integrating the procurement system with the financial management system, i.e. aligning planning, budgeting and expenditure systems. Guidelines could be developed for the procurement cycle as a whole, as well as for different phases of the procurement cycle, such as on planning, market research and contract management. Specialised



procedures and guides could be made available for complex procedures, such as multi-stage procedures. An audit manual could be created to guide auditors on the procedures to undertake audits and to ensure that they are carried out in the same way.

Enforcing the 2012 Act also has a bearing on institutions related to public procurement, notably the Procurement Board, which has a number of responsibilities that are vital for the functioning of the public procurement system. Another institution created by the 2012 Act is the appeals procedure. In addition, the Public Accounts Committee could be put into operation to establish accountability.

Given that these tasks are comprehensive, a strategic plan could be developed to structure the development of the implementing tools. This plan could prioritize the documents to be prepared and to identify the required resources to develop them.

In the medium term, St. Kitts and Nevis could aim at further fine-tuning the legal and regulatory framework by including missing provisions. Changes could aim at increasing competition in the procurement system and establish the conditions for e-procurement, sustainable and strategic procurement, alignment with international obligations and for citizen participation and open contracting. In addition, the government could enact legislation related to internal control and internal audit. This legislation could define the reporting lines to oversight bodies. It could also establish internal control mechanisms and risk mitigation in the procurement function to be put in place in procuring entities. With regards to the appeals mechanisms, the legal and regulatory framework could be updated to include clear timelines as well as rules on appointing the members of the Administrative Review Board.

The institutions of the public procurement system are the focus of several recommendations. Among the focus areas are to evaluate the benefits of separating operative from regulatory functions of the Procurement Board as a means to reduce institutional conflicts of interest. The Ministry of Finance could evaluate and reinforce the status of the Central Purchasing Unit and re-launch it with a clear plan involving the use of framework agreements. The Ministry of Finance could use its normative and regulatory function to clearly assign responsibilities concerning key activities in the public procurement system that are currently not regulated. In addition, there could be clear rules on how decision-making authority is delegated and how accountability is established.

All actors in the public procurement system of St. Kitts and Nevis may benefit from a well-structured public procurement information system, on the one hand due to increased visibility about purchasing opportunities and on the other hand, due to analytical and monitoring capabilities that such information systems provide. The Ministry of Finance could task an entity with planning the development of an information system for the procurement process. This could include an open procurement policy to gather and use information of procurement procedures, the development of e-procurement tools and the definition of a strategy to analyse and use procurement data. Part of such efforts could be to develop a performance monitoring system.

Increasing the capacity of the procurement workforce and furthering procurement professionalization is paramount to improving the procurement system in St. Kitts and Nevis. Several areas highlighted in this assessment can be positively impacted by training and other professionalization tools; most importantly, however, training can improve the performance and outcomes of the public procurement processes. The Ministry of Finance could work with other countries in the region to organize a professionalization



programme for the procurement function. Likewise, it is recommended to ensure sufficient capacity in the office of the Director of Audit, i.e. filling vacancies in the team so it can complete its work.

Greater efforts could be taken to engage suppliers and the general public. Such efforts can increase the efficiency and effectiveness of the public procurement procedures through increased transparency and public oversight. Citizens and suppliers could be allowed to be present at milestones such as the opening of the bids for any competitive process. Engaging the private sector associations in St. Kitts and Nevis to reach out to suppliers and promote an open dialogue can be highly beneficial especially regarding procurement reform. A focused engagement regarding procurement will become even more necessary once the procurement regulations are drafted. Regular spaces for discussion could be created to understand the needs and requirements of both the public and private sectors. Training about the basic aspects of public procurement can support such measures. Part of the efforts to engage suppliers could also focus on raising awareness about the appeals procedure. Aside from explaining how to lodge complaints, care could be taken to ensure a fair and due process that provides suppliers with the confidence that they can use the appeals procedures without fear of disadvantages in the next procurement procedure.

To better understand the market for public procurement, it is advisable to promote the use of a register of suppliers. Information from this register could also serve as an input to better scoping important sectors, assessing risks and opportunities associated to them, and ultimately crafting sound procurement strategies for each one of these. It could also be utilised to reach out to new suppliers when training is offered. Having more suppliers in the public procurement system would help the Government of St. Kitts and Nevis in achieving better value for money in its contracts.

Generally, increasing transparency of the public procurement system can be achieved by making more information publically and electronically available. Confidentiality should be kept only at certain instances of the process, but general documents and milestones could be disclosed to enable stakeholder participation.

A dedicated recommendation is made to highlight the importance of a strengthened anti-corruption framework. Actions to improve the integrity of St. Kitts and Nevis' public procurement system hinge on a number of the recommendations already expressed, and could be further developed together into a comprehensive framework:

- updates to the legal and regulatory framework, such as rules on debarment, conflict of interest, cooling-off periods and secure reporting mechanisms;
- calling relevant institutions into action, such as the Integrity Commission;
- increasing public oversight, for example but increasing the transparency and involving civil society in procurement;
- ensuring sufficient budget and staffing for all relevant activities.

5. Information regarding Validation

The first draft of the report was shared with the assessment focal points in all five states in September 2018. A workshop, both individually with the countries and as a group, was held in September 2018 in



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

This assessment was conducted by a MAPS assessment team coordinated by the OECD with the leadership and support from the Department of Economic Affairs and PSIP in the Ministry of Sustainable Development in St. Kitts and Nevis, CDB, and academic procurement experts. From St. Kitts and Nevis, the main focal point was Lavern Queeley. 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 St. Kitts and Nevis – members of the administration, civil society, private sector and media were open and frank interview partners that made this assessment possible in the first place. A full list of interview partners is provided in the annex to this report.



Annex I: Source Documents

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

The documents analysed for this assessment were:

- 1) Constitution of Saint Christopher (Saint Kitts) and Nevis
- 2) Integrity in Public Life Act (Act 18 of 2013)
- 3) Finance Administration Act (Act 13 of 2007)
- 4) Final MESIC report 2015
- 5) Procurement and Contract Administration Act (Act 28 of 2012)
- 6) Public Service Act (Act 19 of 2011)
- 7) Audit Act (1990)
- 8) Statutory Orders and Rules (No. 9 of 2014)



Annex II: Interviewed Stakeholders

Type of institution	Name of Institution in the country
<p>Institution in charge of the normative/regulatory function for public procurement</p> <p>Authorities responsible for budgeting and financial procedures</p>	<p>Ministry of Finance Mr. Calvin Edwards, Deputy FS, Budget and Administration</p> <p>Ms. Lavern Queeley, Director, Economic Affairs and PSIP, MoSD</p> <p>Mr. Auren Manners, Senior Project Analyst</p> <p>Ministry of Finance, NIA Mr. Colin Dore, PS, Ministry of Finance, Nevis Island Administration (NIA)</p>
Central Purchasing Unit	<p>CPU St. Kitts Mr. Howard Richardson Ms. Petrona Thomas</p>
Selected number of procuring entities including state owned enterprises	<p>Mr. Cromwell Williams, Director, Public Works Department</p> <p>Mrs. Delores Stapleton-Harris, PS, Ministry of Health</p> <p>Mr. Denzil James, Chief Executive Officer, St. Kitts Air and Sea Ports Authority (SCASPA)</p> <p>Mrs. Elretha Simpson-Browne, Chief Executive Officer, National Housing Corporation (NHC)</p> <p>Mrs. Pearl Williams, General Manager, St. Kitts Electricity Company (SKELEC) Limited</p> <p>Mr. C. Jomo Williams, Transmission and Distribution Manager, SKELEC</p> <p>Mr. Rudolph Knight, Materials Manager, SKELEC</p> <p>Nevis Island Administration (NIA) Mr. Colin Dore, PS, Ministry of Finance Mrs. Joan Browne, Principal Assistant Secretary, Fiscal Policy Unit, Ministry of Finance Mr. Ernie Stapleton, PS, Ministry of Communications, Posts, Physical Planning et. al. Ms. Michelle Walters, Assistant Secretary, Ministry of Communications et. al. Mrs. Nicole Slack-Liburd, PS, Ministry of Health Mr. Oral Brandy, General Manager, Nevis Air and Sea Ports Authority (NASPA) Jervan Swanston, NEVLEC</p>
Authorities in charge of internal and external controls and audits	<p>Accountant General's Office – Internal Audit Mr. Levi Bradshaw, Accountant General Mrs. Mellicia Phillip, Deputy Accountant General</p> <p>External Audit Mrs. Carla Pike, Director of Audit</p>



	<p>Nevis Island Administration (NIA) Internal Audit Ms. Marcia David, Treasurer, NIA</p>
Anti-corruption agencies	<p>Ms. Kerstin Petty, Director, Financial Services Regulatory Commission (FSRC) Mrs. Jacqueline Berridge, Director, Financial Intelligence Unit (FIU)</p> <p>Nevis Island Administration (NIA) Ms. Heidi Lynn Sutton, Director, Nevis Financial Services (Regulation and Supervision) Department</p>
Training institutions	Ms. Torfrida Rochester, Chief Personnel Officer, Human Resource Management Department (HRMD)
Representatives of private sector	<p>Mrs. Brenda John, Chief Executive Officer (CEO), St. Kitts and Nevis Chamber of Industry and Commerce Mr. Jose Rosa, President, St. Kitts and Nevis Chamber of Industry and Commerce Laverne Caines – supplier of toiletry, general items</p>
Research institutions, Academia	Mrs. Ionie Liburd-Willett, President, Clarence Fitzroy Byrant College (CFBC)
Media	Mr. Les Roy Williams, Director General of Information Services, Department of Information, Office of the Prime Minister





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