

Strengthening Sustainable Public Procurement in the OECS Project

Product No. 3: Status Assessment of Sustainable Public Procurement in the Organisation of Eastern Caribbean States

Introduction: Scope of the Status Assessment

This status assessment describes the current baseline situation of Sustainable Public Procurement (SPP) in the Organization of Eastern Caribbean States (OECS) with specific reference to the procurement of construction materials and with a particular focus on the three pilot countries participating in the project: the Commonwealth of Dominica, Grenada and Antigua & Barbuda.

Given that all three pilot countries are members of both the Caribbean Community (CARICOM) and the OECS, the assessment reviews the status of SPP at the levels of both these regional organizations, as both have an influence on procurement legislation and operations at the country level, with CARICOM being the more influential, as explained below.

Section A: How Procurement is Implemented at the Regional and Country Levels

A.1 Caribbean Regional Organizations

There are a number of regional and international organizations within the Caribbean which play a key role in shaping and implementing policy with regard to both sustainable development and public procurement. This section examines the role that each of them plays in public procurement.

A.1(a) The Caribbean Community (CARICOM)

The Caribbean Community (CARICOM) was founded by the Treaty of Chaguaramas (1973) and currently functions under the Revised Treaty of Chaguaramas (2001), which established the CARICOM Single Market and Economy (CSME). CARICOM is a supranational organization comprising fifteen member countries. It is a culturally, economically and administratively diverse grouping, comprising not only the common law countries of the English-speaking Caribbean, most of which gained their independence from the United Kingdom in the 1960s and 1970s, but also civil law countries, such as Haiti and Suriname, which inherited civil law systems from France and the Netherlands respectively; relatively wealthy countries such as Barbados (per capita GDP US\$18,148 in 2019¹) and the Bahamas (per capita GDP US\$34,864 in 2019²); larger economies, such as Jamaica (total GDP US\$16.46 billion in 2019³) and Trinidad

¹ Source: World Bank data.

² *ibid.*

³ *ibid.*

and Tobago (total GDP US\$24.27 billion in 2019⁴), which boasts the region's most diversified economy, where mining and quarrying contributed 19.1% of GDP and manufacturing 20.1% of GDP in 2019⁵. CARICOM also includes populous yet poor and conflict-affected countries such as Haiti (population: 11 million) and several small, developing island states, mostly those in the OECS, with populations ranging from 5,000 in Montserrat to 112,000 Grenada, the most populous of the OECS protocol member states, and 395,6000 in Guadeloupe, an OECS affiliate member state and French overseas territory.

Obligated by Article 239 of the Revised Treaty of Chaguaramas to "elaborate a Protocol relating to Government Procurement", CSME Secretariat has developed a Protocol on Public Procurement in which the member states commit "to enhancing the quality of governance in the Caribbean Community through the promotion of fairness, transparency and accountability in the supply of goods, services and works within the CSME". The Protocol was approved by the Thirtieth Inter-Sessional Meeting of the Conference of Heads of Government of CARICOM, held in Saint Kitts and Nevis on 26-27 February 2019.

The Protocol lists its objectives as being to,:

- "(a) create the necessary competitive and non-discriminatory conditions to facilitate achievement of best value for money;
- (b) provide opportunities for access to a single market with regional sales opportunities;
- (c) strengthen the competitiveness of the regional supplier base in particular in relation to micro, small and medium-sized enterprises; and
- (d) encourage the rational use of scarce resources."⁶

It is apparent that several of these objectives are amenable to SPP approaches.

Article 35 of the Protocol, which deals with "Public Procurement and the Environment", provides that:

"Nothing in the Protocol shall be construed as precluding a Contracting Party (member state) from employing its best endeavours to incorporate green procurement considerations in public procurement".

From a legal perspective, this provision may be interpreted as affording a member state which applies green procurement in its public procurement operations protection from a legal challenge from another member state. Green procurement is defined in Article 1 of the Protocol as:

"improved recyclability; high recycled content; greater energy efficiency; utilizing clean technology or clean fuels; reduced water consumption; reduced emissions of irritating or toxic substances during installation or use; and reduced production of toxic substances during use or disposal."

⁴ *ibid.*

⁵ "Review of the Economy 2019", published by Government of the Republic of Trinidad and Tobago, accessed at <https://www.finance.gov.tt/wp-content/uploads/2019/10/REVIEW-OF-THE-ECONOMY-2019-1.pdf>

⁶ CARICOM Protocol on Public Procurement, Article 2.

While the reference to green procurement in Article 35 of the Protocol essentially constitutes the removal of an impediment to a member state's pursuing it, the definition of what constitutes green procurement is encouragingly broad and provides any member state that decides to pursue green public procurement a wide remit to do so across a range of sectors and activities.

It should be noted that, to date, only five CARICOM member states have ratified the Procurement Protocol and these exclude the bloc's two largest economies, Trinidad & Tobago and Jamaica. Furthermore, the Protocol applies only above certain monetary thresholds,⁷ which are set so high as to exclude the majority of government-funded contracts, especially in the smaller economies, from the application of the Protocol, thus limiting its impact at the level of the domestic public procurement market of each member state. Furthermore, it should be kept in mind that, below the thresholds at which the Protocol applies, countries have greater freedom pursue SPP as ambitiously as their own policies and national legislation permit.

In summary, at the CARICOM regional level, the Protocol on Public Procurement provides a promising basis for the future pursuit of SPP within the Caribbean, including within the OECS, even though, at the time of writing, its effect has yet to be fully realized.

CARICOM has also elaborated a CARICOM Model Public Procurement Bill, with which it is intended the member states that ratify the Protocol will be required to align their national public procurement legal regimes. The Model Bill takes as its objectives national treatment and most favoured nation status (concepts derived from the World Trade Organization), transparency, competition, fairness and non-discrimination. However, the Model Bill is silent on the subject of sustainable public procurement.

A.1(b) The Organisation of Eastern Caribbean States (OECS)

The OECS was founded by the Treaty of Basseterre (1981) which was replaced by the Revised Treaty of Basseterre (2010), which created an Eastern Caribbean Economic Union (ECEU).

Although the ECEU guarantees freedom of movement of goods and persons and tariff-free trade within the Union, the Revised Treaty of Basseterre does not define an objective of setting a common public procurement policy at the level of the ECEU. Rather, as noted above, a single market and economy has been established at the level of CARICOM, which encompasses all seven protocol member states of the OECS. Therefore, in respect of its common public procurement legal regime, the OECS falls under the CSME and does not have its own regional public procurement legal regime at the OECS level. That said, it must be kept in mind that a single market for public procurement within CARICOM is still under construction. At the CARICOM regional level, the legal framework for public procurement is not yet complete and, as

⁷ >US\$3.0m for civil works; >US\$4.0m for civil works in less developed countries; US\$0.15m for goods and services.

noted above, only five of fifteen member states have so far signed the CARICOM Protocol on Public Procurement.

OECS Development Strategy

At the OECS level, the organization's development priorities are expressed in a document entitled, "OECS Development Strategy: Shaping our Shared Prosperity 2019-2028", which the OECS Commission published in draft in October 2018; the fact that the strategy is still in draft suggests that the commitment of the member states to its contents is not yet certain. While this strategy includes all three pillars of sustainable development (social, economic and environmental), it makes no mention of how public procurement might be harnessed in support of achieving those objectives. Within the health sector component of the strategy, it articulates an objective that member states should, "encourage investment in the OECS Pooled Procurement System", although this objective is constrained to the further development of the OECS Pharmaceutical Procurement Service with the specific aim "to meet health priorities". The intention of the strategy, therefore, is limited to increasing the contribution that pooled pharmaceutical procurement can make to meeting the community's priorities in the health sector; while the strategy makes no mention of pooled procurement outside of the health sector, the OECS Commission is, in reality, working on scaling up its pooled procurement operations and has indicated its intention to expand its application to the procurement of sustainable construction materials, resulting from this project.

The OECS Development Strategy is constructed around three mutually reinforcing pillars: generating economic growth, promoting human and social wellbeing and sustainable use of the OECS's natural endowments. The first pillar commits the ECEU to reduce the rate of unemployment by a quarter, which will require economic growth of 3 to 5% annually during the life of the strategy; the second pillar commits the OECS to providing equitable and easy access to quality social services, including health, education and social protection; the third pillar focuses on "integrating environmental sustainability into social and economic development and realizing fuller stakeholder ownership of, and participation in, environmental management". Public procurement has the potential to contribute substantially to the realization of all three pillars, though the strategy does not articulate such an approach.

There are a number of other element of the strategy that are amenable to procurement approaches, including:

- implement a Market Intelligence System for identifying and engaging suppliers, shippers and buyers and importers in the region, as well as outlining market access conditions for trade in goods in the ECEU and CSME and other OECS/CARICOM Bilateral Trade Agreements;
- launch a sustained "Buy OECS" media campaign highlighting the importance of OECS manufactures to job creation, the development of inter-sectoral linkages and the overall health of the economic system.

- conduct markets study of select Global Innovation for Local Market (GILM) industries to identify possible industries and technologies of strategic focus for the OECS. Based on market study results develop long-term development plan for these industries.
- roll out program focused on development and commissioning of new packaging and labelling for products.
- continue to work with manufacturers and industry support organizations to upgrade Occupational Health and Safety (OSH) systems in keeping with requirements nationally as well as international best practices. Effort will be made to secure suitable financing arrangements for smaller establishments to undertake remedial works as identified in OSH audits.
- evaluate the adequacy of existing arrangements for working capital support for SMEs, especially as it relates to financing support for working capital to assist client firms undertake remedial works necessary for meeting Occupational Health and Safety and HACCP requirements, and other productivity and quality enhancing interventions and investments.
- develop a network of OECS heritage sites and encourage a commitment at regional and national levels to conserve, interpret and promote the region's cultural heritage.

For the future, each of these actions should be explored from the perspective of the role that public procurement might play in their realization.

OECS Building Code

The OECS Building Code 7th Edition (September 2016) contains several provisions that directly affect issues of sustainability in construction, including the choice and usage of construction materials addressed by this project.

Sustainability considerations are addressed, albeit sparingly, at various junctures in the Code, including:

- Section 626 Site Waste Disposal: The Code recognizes that “processing of site waste is carbon-intensive” and requires that “mitigation of climate change requires that the amount of site waste shall be minimized and its transportation shall be limited to the nearest suitable site for disposal, recycle or reuse”. Recognition is also afforded to the potential role of packaging in environmental degradation, as the Code requires that, “Packaging material and off cuts shall be separated for recycling purposes wherever possible” although the requirement is somewhat weakened by language such that builders should, “Consider setting up a centralized, off-site, materials handling facility to remove packaging and arrange for recycling”.
- Section 1307 Sea Walls and Shoreline Protection: The Code requires that, “The design shall take account of the projected rise in sea level due to climate change.”
- Section 1307.3 Climate Change Adaptation: This section recognizes the need to consider climate change factors in the excavation and foundations of buildings, noting that,

“Non-elevated buildings close to the shoreline are most vulnerable to damage by waves” and requiring that, “In such locations, the ground floor structure shall be at least 3ft above the predicted high tide level, with additional allowance for wave action”.

- Section 14: Timber Construction contains a number of requirements relevant to sustainability, including:
 - o 1403.3: “Sustainable Timber Mitigates Climate Change:
 - (a) Timber must be specified from an appropriate source to be categorized as renewable.
 - (b) Wherever possible, use timber from nearby sources.
 - (c) Select timber products with volatile organic compound limits e.g. wood products that do not contain urea-formaldehyde resin”.

The language of the Code on timber products suggests that these provisions are for guidance only and do not constitute a mandatory requirement that OECS member countries use sustainable timber.

Section 16: Plain and Reinforced Concrete contains relevant provisions on concrete, cement and water.

1603.2 Requires that cement shall conform to ASTM C150 Specification for Portland Cement and notes that, “Reducing the Portland cement content of the concrete mix is a significant contribution to the mitigation of climate change”. The Code notes that cement replacement materials have been found within the OECS and used to make Portland-pozzolanic blended cements, using materials from Dominica and Nevis (tarrish), St. Lucia and Martinique (pumice) and Montserrat (volcanic ash).

Given that the production of Portland cement has been estimated to contribute to about 10% of global carbon dioxide emission⁸, any advances that the OECS can make in reducing cement imports or substituting local materials for imported ones, thus reducing the transportation of cement, are options that the OECS would be well-advised to explore as part of the region’s sustainability efforts.

Section 1603.3: Aggregate requires that “The use of natural aggregates for normal construction concrete shall be in accordance with...ASTM C33 Specification for Concrete Aggregates”.

Section 1603.4: Water requires that, “water used in mixing concrete shall be clean and free from injurious amounts of oils, acids, alkalis, salts, organic materials or other substances that may be deleterious to concrete or reinforcement” but does not go so far as to stipulate requirements for accessing and disposing of water used in mixing concrete.

The Code recognizes that “the large amount of informal housing present in most countries will be outside of the regulatory stream”, which suggests that the scope and impact of the Code are limited by the fact that it applies only to the formal sector. Furthermore, the Code also

⁸ Scrivener, Vanderley & Gartner, “Eco-efficient cements: potentially economically viable solutions for a low CO2 cement-based materials industry”, Cement and Concrete Research (June 2018).

recognizes that the development of an adequately staff building inspectorate is necessary to ensure that the minimum standards stated in the code and guidelines are maintained.

The OECS Commission (OECSC)

The OECS Commission (OECSC) itself does not practise SPP in its own procurement operations. Sustainability is mentioned in the Commission's Procurement Manual⁹ under the definition of best value, as follows:

“Best Value: The optimum combination of whole-life costs including price, delivery time, quality (or fitness for purpose) to meet the OECSC's requirement. Depending on the nature of the Purchase, whole-life cost may include implementation costs, on-going operating costs and end-of-life disposal. Best Value may also involve due regard to other OECSC's policies, such as those dealing with environmental sustainability and socio-economic matters”.

However, in practice, the Commission does not apply SPP criteria when conducting procurement under its own programs. At the time of writing, the OECSC is re-writing its Procurement Manual and has indicated its intention to include a policy on SPP in its new Procurement Manual.

A.1(c) Caribbean Development Bank

The Caribbean Development Bank (CDB) is a regional financial institution which was established by an Agreement signed on October 18, 1969 in Kingston, Jamaica and entered into force on January 26, 1970. The Bank came into existence for the purpose of contributing to the economic growth and development of member countries in the Caribbean, and promoting economic cooperation and integration among them, having special and urgent regard to the needs of the less developed members of the region. Its current objective is to help Borrowing Member Countries to reduce inequality and halve the incidence of extreme poverty by the end of 2025 through supporting inclusive and sustainable growth and promoting good governance. CDB has a current investment portfolio of approximately US\$1.6 billion in nineteen borrowing member countries in the Caribbean, including all seven protocol member states of the OECS and three of its five associate member states, the exceptions being Guadeloupe and Martinique, which are overseas departments of France.

Article 22 of the Revised Treaty of Chaguaramas lists CDB as one of CARICOM's Affiliate Institutions, “with which the Community enjoys important functional relationships which contribute to the achievement of the objectives of the Community”.

All seven Protocol Members States of the OECS are current borrowing member countries of the CDB, namely: Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and The Grenadines. These include all three pilot countries of this project.

⁹ Procurement Manual of the OECS Commission (November 2013, revised June 2016).

CDB's current procurement rules contain the following provision regarding SPP:

“If agreed with CDB, Recipients may include additional sustainability requirements in the procurement process, including their own sustainable procurement policy requirements, if they are applied in a manner that is consistent with CDB's Core Procurement Principles”.¹⁰

However, this provision has yet to be applied in practice by any member country and, while CDB strongly supports the SPP agenda, there are currently no CDB-financed projects where SPP requirements are being applied to procurement transactions.

A.1(d) Caribbean Disaster Emergency Management Agency (CDEMA)

CDEMA is a regional inter-governmental agency for disaster management in the Caribbean Community. It presently comprises nineteen participating states, including all seven protocol member states of the OECS.

CDEMA's functions are:

- mobilizing and coordinating disaster relief;
- mitigating or eliminating the immediate consequences of disasters in participating states;
- providing immediate, coordinated response by means of emergency disaster relief to any affected participating state;
- securing, coordinating and providing to interested inter-governmental and non-governmental organizations reliable and comprehensive information on disasters affecting any participating state;
- encouraging the adoption of disaster loss reduction and mitigation policies and practices at the national and regional level and cooperative arrangements and mechanisms to facilitate the development of a culture of disaster loss reduction; and
- coordinating the establishment, enhancement and maintenance of adequate emergency disaster response capabilities among the participating states.

CDEMA's current procurement policy¹¹ defines the following objectives for its procurement operations: economy, efficiency, effectiveness, transparency, prudence and professional judgment, ethical behavior, probity, fair and equal treatment and equal opportunity for all bidders. While it makes no mention of SPP, CDEMA's mission statement commits it “to build disaster resilience in the Caribbean” and, as such, CDEMA has a direct interest in the objectives of this project, as its work would clearly benefit from having greater supply and use of sustainable construction materials in the Caribbean, whether produced from within the region or imported from other countries.

¹⁰ Procurement Procedures for Projects Financed by CDB (January 2021), Section 6.04.

¹¹ CDEMA Procurement & Contract Management Policies and Procedures Manual (March 2018).

A.2 International Financial Institutions (IFIs)

A.(2)(a) Inter-American Development Bank (IDB)

IDB currently has an investment portfolio worth US\$5.2 billion in seven Caribbean countries, excluding the OECS.¹² In the OECS, IDB's investments are routed through and supervised by the Caribbean Development Bank. The current value of IDB's investment portfolio in the OECS is US\$50.0 million in six CDB borrowing member countries; CDB borrowing member states that are not independent countries¹³ are ineligible to benefit from IDB financing. Because CDB supervises IDB's operations in the OECS, CDB Procurement Regulations apply to those investment projects, including their provision on SPP (see section A.1(c) above).

A.(2)(b) The World Bank

The World Bank is the largest IFI operating in the Caribbean with US\$2.56 billion in investment loans under implementation, financing 65 projects across 14 countries. It is also one of the leading providers of technical assistance to Caribbean countries for public procurement reform, including supporting Grenada in the development of its SPP Policy in 2019 (see section A.3 (c), below).

When it launched its new Procurement Policy in 2016, the World Bank put sustainable development front and centre of its procurement function by articulating its vision statement for procurement thus:

“Procurement in investment project finance (IPF) operations supports Borrowers to achieve value for money with integrity in delivering sustainable development”.¹⁴

In furtherance of this vision statement, the World Bank's current Procurement Regulations contain the following provision on sustainable procurement:

“If agreed with the Bank, Borrowers may include additional sustainability requirements in the procurement process, including their own sustainable procurement policy requirements, if they are applied in ways that are consistent with the Bank's Core Procurement Principles”.¹⁵

This provision is amplified in the World Bank's guidance note on SPP¹⁶, which clarifies that:

¹² Bahamas, Barbados, Belize, Dominican Republic, Haiti, Suriname, Trinidad and Tobago.

¹³ Anguilla, British Virgin Islands, Monserrat.

¹⁴ World Bank Policy: Procurement in IPF and Other Operational Matters (July 2016).

¹⁵ World Bank Procurement Regulations for IPF Borrowers, (July 2016, revised November 2017 and August 2018) Section 5.12.

¹⁶ “Procurement Guidance: Sustainable Procurement” (April 2019), available at:
<http://pubdocs.worldbank.org/en/788731479395390605/Guidance-on-Sustainable-Procurement.pdf>

“The use of sustainable procurement is at the Borrower’s discretion. This recognizes that countries continue to evolve national and regional level policy settings that work towards greater sustainability in development. However, the Bank encourages Borrowers to actively consider and apply sustainable procurement, where appropriate.”

This language indicates that it is not necessary for a borrowing member country of the World Bank to have in place a legally binding policy on SPP in order for the Bank to accept the application of sustainable procurement to the award of Bank-financed contracts by the country. Rather, the Bank may accept the country’s use of SPP provided it determines that the way the country intends to apply SPP is consistent with its Core Procurement Principles of value for money, economy, integrity, fit for purpose, efficiency, transparency and fairness.

It is apparent that the World Bank’s provision on SPP is similar to that of the CDB, as a result, it is assumed, of the harmonization effort that has been going on between IFIs over the past decade or more. Both financiers adopt what may be described as a passive posture towards SPP in their projects: that is, if the borrowing country government intends to apply SPP to procurement under a project which they finance and if the financier agrees to the government’s intention, then the government may apply SPP to the donor-funded project. The responsibility for taking the initiative to apply SPP, therefore, rests with the project implementing agency of the borrowing country.

Given the volume of lending that the CDB and the World Bank are undertaking in the Caribbean and the fact that, in most OECS countries, the largest infrastructure projects and highest-value contracts for civil works are typically financed by IFIs, the future success of SPP initiatives in the Caribbean will rely substantially not just on governments’ commitment to pursuing sustainable public procurement but also on their ability to secure the agreement of the IFIs to apply SPP principles to procurement under the projects that they finance.

To date, the opportunity to apply the SPP provision contained in CDB’s and WB’s procurement regulations has not yet arisen. Given that only Grenada currently has a legally binding SPP policy, it is the country that is best-placed to lead the way in applying SPP under IFI-funded projects. None of the other OECS countries that are borrowing members of those two banks has a legal imperative to apply SPP under projects financed by IFIs.

A.3 Implementation of Public Procurement at the Country Level

The following section presents an overview of how public procurement is implemented in each of the three pilot countries and identifies SPP-relevant priorities that each country has identified in its national sustainable development plan or in other bodies of legislation or policy.

A.3.(a) Antigua and Barbuda

Public procurement in Antigua and Barbuda is governed by the Tenders Board Act of 1991, amended in 2000 and 2002. The purpose of the Act, as its name suggests, is simply to regulate the operations of the Tenders Board (TB); it sets no objectives for public procurement and is silent on most of the key aspects of procurement regulation.

The TB conducts procurement functions on behalf Government, including inviting and evaluating tenders above 100,000 Eastern Caribbean (EC) Dollars (approximately US\$37,000); below that threshold, procurement is conducted on a decentralized basis by individual procuring entities. The Act provides only two procurement methods: Public Tendering, whereby the TB publishes an invitation to tender in the Gazette, and Selective Tendering, whereby the TB or procuring entity selects bidders to be invited directly to submit bids; the Act contains no provision as to a minimum number of bidders to be invited. Selective Tendering may be used “whenever the Board considers it expedient or desirable to do so”;¹⁷ there are no other conditions for use of the Selective Tendering procurement method.

The Tenders Board (Amendment) Act No. 8 of 2002 weakened the Act of 1991 by adding to the functions of the Board that, “The Board may exempt the Government or any statutory body to which this Act applies from the tender procedure under this Act”. While the Act requires all contracts estimated to cost more than 100,000 EC Dollars to be awarded by Public Tendering, the most widely used procurement method is single source procurement, where only one bidder is invited to participate and there is no competitive process. Single source procurement is not one of the procurement methods provided under the TB Act. In practice, a substantial percentage of public contracts are awarded under waivers to the application of the Tenders Board Act. As a result, the public procurement system of Antigua and Barbuda is characterized by a lack of competition and the availability of excessive discretion under the applicable procurement rules.

The provisions of the Act regarding the criteria to be used in the evaluation of bids are limited and written so as to add to the discretion afforded public officials under the Act. The Act provides that the TB shall accept the tender offering the lowest price except where it has “good reason to justify the acceptance of an offer higher than the lowest offer”.¹⁸ The Act does not provide any definition of “good reason” nor any criteria by which such a justification might be

¹⁷ Tenders Board Act 1991 (Antigua and Barbuda).

¹⁸ Tenders Board Act (1991).

made. Acceptance by the Board of a higher offer is subject to the approval of the Minister of Finance on a case-by-case basis.

A new Procurement and Contract Administration Act (2011) has been on the statute book for eight years but the Government has never brought into effect; this Act makes no reference to SPP. While the Government has held up the promulgation of the Act since 2011, its recent action in signing the CARICOM Protocol on Public Procurement may provide the impetus needed to move reform forward, albeit that it has not yet ratified the Protocol, is not currently applying it and has not yet assumed any obligation to transpose its provisions into the country's domestic legislation.

Antigua and Barbuda's Medium-Term Development Strategy 2016-2020 commits the Government, as a key measure to improve expenditure management, to "enact new procurement legislation and regulations and improve the institutional arrangements for procurement in the public sector", as well as to "curtailing expenditure on goods and services and ensuring more efficient use of resources by enhancing procedures for procurement and contract administration". While the Strategy makes no specific link between public procurement and the country's sustainable development goals, these reforms may offer an opportunity to integrate SPP considerations into the legal regime for procurement.

The Medium-Term Development Strategy 2016-2020 also identifies four dimensions of sustainable development: optimal generation of national wealth, enhanced social cohesion, improved natural environment and sustained historical and cultural assets and enhanced citizen security.

Within the natural environment area, the strategy places emphasizes improving water resource management, recognizing that, "Antigua and Barbuda is a water scarce country". This priority will likely have implications for the local production of concrete and concrete blocks, in the manufacturing of which water is heavily used.

With respect to the preservation of historical and cultural assets, local production of both these products is also potentially impactful. For example, the Greencastle Hill National Park site, which has been described as "a tropical Stonehenge" is situated close to a limestone quarry owned by the Ministry of Housing. Therefore, it would benefit the government's priorities in the area of preservation of historical and cultural assets to ensure that sustainable quarry management practices are followed in the quarrying of gravel for use in the local production of concrete and concrete blocks.

In the energy sector, energy generation is heavily reliant on fossil fuels, with generation from renewable energy resources contributing just 11% of installed energy in 2018. Under the Government's Sustainable Energy Action Plan, its action plan for diversification of energy sources mandates a target to achieve 15% renewable energy in electricity supply by 2030; as government is a major user of energy, SPP clearly has an important role to play in ensuring the country reaches that target.

A.(3)(b) Commonwealth of Dominica

Public procurement in Dominica is currently governed by the Public Procurement and Contract Administration Act (No.11 of 2012). However, this Act has never been fully implemented due, among other factors, to a mismatch between the organizational arrangements as laid out in the Act and the way the Government functions in practice. The Act contains no provisions on SPP.

However, future prospects for SPP in Dominica look brighter due to the fact that, in furtherance of the stated objectives of the country's National Resilience Development Strategy – Dominica 2030 (“NRDS”), the Government, with support from the CDB, is nearing completion of a new Public Procurement and Disposal of Public Property Act 2021, which sets a specific objective “to promote economically, environmentally and socially sustainable public procurement”. The draft Act also includes provisions for the promotion of MSMEs. The draft Act has gone through public consultation, is expected to be submitted to the House of Assembly by March 2021 and to come into effect by mid-2021. Once the new law is promulgated, it will provide a strong basis for the growth of SPP practice in Dominica.

Public procurement in Dominica is currently organized on a decentralized basis, with individual line ministries of the government implementing their own procurement transactions on a decentralized basis and a central monitoring function in the Ministry of Finance.

The most widely used procurement methods are Restricted Bidding, whereby the procuring entity, without advertising, directly invites a limited number of bidders to bid; the number invited varies between three and five, depending on the estimated value of the contract. Request for Quotations and Direct Procurement are the next most widely-used procurement methods, with Open Competitive Bidding used infrequently. Procuring entities generally limit participation in procurement proceedings to domestic bidders, except where their requirements can be met only from outside the country. As such, public procurement is not characterized by a high level of competition. As Dominica has signed but not yet ratified the CARICOM Protocol on Public Procurement, it has not yet assumed any legal obligation to open its public procurement market to bidders from other Caribbean countries. That said, as the Government does not collect or publish data on public procurement, it is difficult to form an accurate, empirically-based measure of how open and competitive the country's procurement market is.

Under the NRDS, the country has laid out an ambitious vision, “to build the first climate-resilient country in the world”, which includes inter alia:

- enhancing infrastructure resilience;
- enhancing the resilience of ecosystems and sustainable use of natural resources, including forestry, marine and water;
- implementing a comprehensive risk management framework and pursuing a low-carbon development pathway, involving greening the economy;
- sustained sustainable and inclusive growth;
- employment creation;
- environmental management; and
- cultural preservation.

The NRDS links directly to the UN SDGs, including SDG 12 “ensure sustainable consumption and production patterns, where the NRDS commits to, “By 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, in accordance with agreed international frameworks, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment”.

In a broader sense, the potential linkages between the NRDS and SPP are so numerous as to exceed the remit of this Status Assessment document. It is recommended that, during the remaining period of implementation of this project, bilateral discussions with the Government of Dominica might focus on which are the areas among the country’s development priorities that are most immediately amendable to an SPP approach in the short term.

One area which may merit immediate attention is the Micro, Small and Medium Enterprise Development Bill 2020, supported by the MSME Policy & Strategic Plan (October 2020), developed by the Small Business Unit of the Ministry of Tourism, International Transport and Maritime Initiatives. Clause 25.1 of the draft Bill on “Government Set-Aside Procurement” commits the Government to, “use its best efforts to ensure that at least twenty-five percent of the procurement of goods and services required annually by the Government is sourced from approved enterprises”. It is noted that civil works is excluded from this definition; this may be an oversight in drafting. The new draft Public Procurement and Disposal of Public Property Act 2021 sets as one of its purposes, “to promote the long-term industrial development of the Commonwealth of Dominica”, which would appear to complement the MSME set-aside target defined in the draft MSME Bill.

A.(3)(c) Grenada

Public procurement in Grenada is governed by the Public Procurement and Disposal of Public Property Act (No. 39 of 2014), as amended by the Public Procurement and Disposal of Public Property (Amendment) Act (No. 1 of 2018). While the 2014 Act set as an objective of public procurement, “facilitate the promotion of local industry and economic development”, the 2018 amendment signaled a more ambitious posture in the government’s commitment to SPP, as it added a provision to the objectives of the Act, “to promote local industry, sustainable development and protection of the environment”.

Having amended the Act to provide a legal basis for pursuing SPP, the Government then adopted a Cabinet Conclusion on “Implementation of a Sustainable Public Procurement Policy by the Government of Grenada” (July 22, 2109), which links SPP directly to the achievement of Grenada’s National Sustainable Development Plan 2035. Both Amendment 1 to the Act and the SPP Policy were prepared with the support of a technical assistance program provided by the World Bank.

Under the terms of a Second Fiscal Resilience and Blue Growth Development Policy Credit from the World Bank, signed on January 7 2020, the Government has committed itself to a target of including sustainability requirements in at least 25% of publicly-awarded contracts by the end of 2020. While no hard data have yet been published regarding the Government’s progress towards the achievement of this target, it is unlikely that the target will have been achieved, given that the World Bank’s support to the implementation of the policy was curtailed by the

effects of the Covid-19 pandemic, which caused the World Bank to suspend all mission travel to its client countries effective March 2020.

To date, the Ministry of Finance has conducted one tender to award a framework agreement for the supply of paper products (stationery, printer and photocopier paper, sanitary paper products). However, it has not yet extended the scope of application of its SPP policy to encompass construction materials.

Grenada has made commendable progress to strengthening SPP in its national public procurement regime and is the only country in the OECS to have put in place a legal and policy framework for SPP. Implementation is the next challenge facing the country and it is a multi-dimensional challenge, given the scarcity of skilled procurement staff in the government.

Building climate resilience in public procurement is a stated objective of Grenada's National Sustainable Development Plan 2020-2035, which also emphasizes the importance of enhancing internal government controls of public procurement as a means for improving public sector governance.

The Plan rests on three sustainable development pillars: society, economy, and environment and is aligned with the UN SDG. It identifies three overarching long-term goals, of which Goal #2, "Vibrant, Dynamic, Competitive Economy with Supporting Climate-and-Disaster-Resilient Infrastructure", aligns with SDG12. While the Plan reads in large part like an SPP To Do list, there are several commitments that lend themselves most immediately to implementation through SPP, including commitments to:

- transitioning to a green economy will require us to improve how we use and manage our natural resources to synchronise economic activity and environmental sustainability.
- create "green jobs" and advance sustainable development and transformation. Accordingly, investments in clean and renewable sources of energy such as wind, hydro, and solar power for domestic and industrial use must be scaled up.
- scaling up of renewable energy activities must include: (a) developing incentive packages to clean energy services to reduce demand for fossil-fuel-generated electricity from the grid and mainstreaming clean energy activities into climate change adaptation strategies.
- strengthening institutional support to MSMEs, including preparation and implementation of a comprehensive MSME policy and strategy, with supporting legislation to provide strategic direction for the MSME sector.
- Building and maintaining resilient infrastructure requiring long-term commitments and capital outlay, recognizing that climate change creates major challenges for infrastructure development through the impact of sea level rise, extreme weather events (storm surges, hurricanes, increasing incidence of intense rainfall and drought, and high temperatures), and the need to reduce carbon emissions.

Again, as with Dominica, it is recommended that bilateral discussions with the Government of Grenada should focus on which of these priorities might be amenable to advancement through an SPP approach in the short term.

Section B: How Procurement of Construction Materials is Implemented at the Organizational Level

This section addresses how procurement of construction materials is undertaken at the organizational level in each of the three pilot countries, with particular reference to the Ministry of Public Works, or equivalent, as the primary purchaser of construction works, including construction materials.

B.(1) Antigua and Barbuda

According to information provided by the Government for the completion of the SPP status assessment questionnaire, in Antigua and Barbuda, some 80% of civil works procurement is undertaken by the Ministry of Works, with 15% being conducted by the central administration and a further 5% by state-owned enterprises. The national budget finances some 85% of public works, with only 15% being financed from external sources; this may be due to the fact that Antigua and Barbuda is a middle-income country with a per capita GDP of US\$17,113¹⁹, so its level of borrowing from multilateral development banks is much lower than that of other two pilot countries.

The most commonly used procurement method is direct procurement without competition, while open competitive bidding is used only in a minority of cases. The Government has entered into a contractual arrangement with Easi-Buy, an American e-procurement vendor, to conduct selected public tenders electronically on behalf of the government but these amount to only a handful of transactions annually. The great majority of public procurement transactions are still paper-based.

The Ministry of Works does not procure construction materials directly; rather, it awards contracts for civil works, in which construction materials are included within the scope of works and listed in the Bill of Quantities, supported by the relevant technical specifications.

Price is the most important evaluation criterion employed in the evaluation of bids for civil works, with contract award invariably being made to the lowest-priced responsive bid that meets a defined minimum level of technical quality.

Consideration is not currently given to sustainability factors in the evaluation of bids. The Ministry of Works personnel have had no training to date on sustainable development or SPP and the leadership of the Ministry believes that the Ministry could not introduce SPP into its procurement operations without first having the necessary specialist training.

¹⁹ Source: World Bank data.

B.(2) Commonwealth of Dominica

According to information provided by the Government for the completion of the SPP status assessment questionnaire, the Ministry of Public Works and the Digital Economy (MPWDE) is the single largest public purchaser in the country, accounting for some 90% of procurement of construction works, including construction materials, although most of those materials are procured through contracts awarded to private-sector contractors for the civil works, rather than materials being directly procured by MPWDE.

In the procurement of civil works, technical specifications are defined based on the end-user's requirements and works must conform with local building codes.

MPWDE evaluates bids based on the most advantageous bid, with price, time schedule for performance and the financial terms offered by the bidder being the main factors evaluated. The most commonly used procurement method is Restricted Tendering, with between 3 and 5 bidders being directly invited to bid, depending on the value and complexity of the contract. Open Competitive Tendering is used only in a minority of cases. The qualifications of the bidders are usually evaluated only in procurement processes financed by multilateral development banks; in domestic procurement processes, MPWDE already knows the qualifications and capacity of all local bidders, so it evaluates bidders' qualifications less formally under domestic procurement processes.

B.(3) Grenada

According to information provided by the Government for the completion of the SPP status assessment questionnaire, in Grenada, contracts funded by IFIs account for some 85% of public contracts, with contracts funded by the government's own budget accounting for the remaining 20%. Technical specifications for civil works, including construction materials, are defined by end-user departments based on their own requirements, while no specific priority is currently afforded to sustainability requirements in the civil works area, nor are sustainability criteria typically considered in the evaluation of bids, with price being the dominant criterion. Although consultations were held with the private sector in the run-up to the promulgation of Grenada's SPP Policy, there is currently no formal program of engagement between the Government and suppliers or contractors aimed at developing more sustainable products.

With respect to the products assessed within the scope this project – lumber and concrete blocks – all lumber is imported, mostly from Guyana, and is widely used as a roofing material. According to the Ministry of Infrastructure Development, Public Utilities, Energy, Transport and Implementation, the Government currently imposes no environmental requirements for lumber; rather, in specifying its requirements, states only material properties, such as strength.

There is some small-scale local production of concrete blocks on-island but the quality of the finished product is variable. The government also makes considerable use of concrete blocks imported from Trinidad, which are reported to be of higher quality and often cheaper than locally-produced blocks. Ministry is not procuring these materials directly; rather, it awards civil works contracts to contractors, who then decide which materials to buy and from where to source them. Contractors invariably buy the cheapest available materials, whether local or

imported, that meet the Ministry's minimum technical specification because price is the key criterion used by the Ministry in evaluation. Contract award is on the basis of the lowest-priced, technically and commercially responsive bid submitted by a bidder who meets the specified minimum qualification requirements; sustainability requirements are not currently taken into account in the evaluation of bids for construction works or materials.

The same Ministry has an internal policy that requires them not to use environmentally hazardous materials and also has energy efficiency standards for plant and equipment that apply to such materials supplied under all public contracts. In addition, the Ministry has guidelines for materials disposal. Contractors bidding on civil works contracts are required to present, as part of their bid, a social and environmental plan for the execution of the works.

Given that Grenada's public procurement legal framework is comparatively well-developed and is enforced by the Ministry of Finance, the most widely-used procurement method is Open Competitive Tendering; Selective Tendering is used less commonly, while Request for Quotations is used for small-value procurement requirements.

Section C: Engagement with Stakeholders

Grenada is the only one of the three pilot countries where the Government has engaged in stakeholder engagement regarding SPP. In the lead-up to the adoption of its Cabinet Conclusion on SPP in July 2019, the Central Procurement Unit of the Ministry of Finance held extensive stakeholder consultations with several line ministries of government, statutory corporations, the Grenada Solid Waste Management Authority and representatives of the local private sector. These consultations revealed a high level of interest in SPP on the part of the public sector and an even greater level of interest among suppliers, who were already supplying private-sector clients in the country, such as hotels and industrial companies, with goods that feature sustainability requirements, such as white goods, cars and air-conditioning units. The supplier community welcomed the Government's stated aim of introducing sustainability requirements into public procurement, particularly as the timing of the consultation gave them advance notice to find new overseas sources of supply for the goods that the Government buys, which is particularly important, given that most manufactured goods are imported from outside the country.

Section D: Application of International Agreements

None of the three pilot countries are members of the World Trade Organization Agreement on Government Procurement.

Section E: Recommendations for Implementing SPP in the OECS

From a purely technical procurement viewpoint, there are few obstacles to implementing SPP in the OECS. In Grenada, of course, the legal and policy bases are already in place. In Dominica, SPP is feasible within the current legal framework and will be even more readily implementable once the new Public Procurement and Disposal of Public Property Act 2021 comes into effect later this year. In Antigua and Barbuda, introducing SPP may be more of a challenge because not only is the current legal framework for public procurement weak but it is also implemented only sporadically.

Given the nature of the two types of construction materials currently envisaged for inclusion in the project – lumber and concrete blocks – the procurement approach need not be particularly complex. These are not high-technology goods that entail operating and maintenance costs; as a result, bid evaluation approaches such as life-cycle costing are not appropriate.

Recommended approaches might include:

- ensuring that the technical specification for the goods, as contained in the bidding documents, reflects appropriate sustainability requirements, such as certified lumber;
- requiring that goods offered by bidders in their bids should conform to applicable national, regional or international standards;
- stipulating sustainability requirements in respect of the source of supply and the conditions of extraction or manufacturing e.g. concrete blocks that are produced using gravel mined from quarries that meet appropriate sustainable management standards and/or that manufactured in production facilities that meet applicable national labour laws or international labour standards;
- stipulating requirements the sustainable disposal of materials at the end of life, in line with circular economy principles, and that recycled and/or recyclable materials shall be used for packaging all goods supplied to the government under public contracts and requirements for the sustainable disposal of such packaging materials after use;
- specifying some requirements in respect of the qualifications of the bidder i.e. that they must have a proven track record of successfully supplying similar sustainable goods or performing similar contracts in the recent past and that they not have a recent track record of violating applicable national environmental or labour laws;
- Given that the OECS Development Strategy is still in draft, the OECS Commission may wish to take this opportunity to reflect in the strategy, before finalization, how SPP might be harnessed to contribute to the realization of its objectives.
- In Dominica’s draft Micro, Small and Medium Enterprise Development Bill 2020, Clause 25.1 on “Government Set-Aside Procurement”, it is recommended that civil works

should be added to the scope of public procurement to which the set-aside scheme will apply.

As a general approach, these requirements would be stated in the bidding documents as mandatory requirements, that is, a bidder who submits a bid offering goods that do not meet them will have his bid rejected. Equally, a bidder who fails to meet the stated minimum qualification requirements would be disqualified on qualification grounds, even if its bid is otherwise responsive.

In the comparison of two or more bids, an evaluation methodology using rated criteria could be applied, whereby all bids that offer goods meeting the minimum required specifications and standards are evaluated as responsive, while bids offering goods that exceed the minimum requirements by a greater margin would be afforded additional points in the technical evaluation of the bid; a notional penalty for products that have high monetary or environmental costs of disposal at the end of their life could also be applied in evaluation. The total technical score of each bid would then be combined with its price, using a predetermined weighting, to arrive at the total evaluation score for each bid.

The choice of procurement method could range from Open Competitive Bidding to Restricted Bidding to Single Source Procurement.

Open Competitive Bidding is the most transparent, competitive approach but would be feasible only where the government's knowledge of the national, regional or international supply market indicates that the supply base is sufficiently large as to result in the submission of a competitive number of bids.

Restricted Bidding would be an appropriate procurement method where there a limited number of known qualified suppliers. This method is less transparent and competitive than Open Competitive Bidding because the procuring entity directly invites bids from named suppliers, without advertising the procurement opportunity. It is an available procurement method in the national procurement laws of most OECs countries and in the CARICOM Model Bill on Public Procurement and its use may be justified where there is a limited number of available qualified bidders. The SPP Market Readiness Assessment being prepared under this project will provide invaluable information to governments about potential sources of supply and the number of bidders available for each type of product.

Single Source Procurement is another available procurement method in most bodies of procurement legislation and its use may be justified under defined conditions. However, it is the least transparent, least competitive of all procurement methods and every instance of its use brings with it a level of reputational and fiduciary risk that may undermine a government's attempts to demonstrate the benefits of SPP. Because only one bid is solicited under this procurement method, the procuring entity does not have an opportunity to reward bids offering more sustainable solutions; rather, the procuring would have to define the minimum acceptable sustainability considerations in the technical specifications for the products it

intends to procure and, if the sole bid submitted meets those requirements, would be obliged to award the contract against that bid, assuming the bid is otherwise responsive.

Finally, given the relatively lack of technical skills of most public procurement practitioners in the OECS and the shortage of skilled procurement staff in most governments, it would be advisable to keep procurement methods and evaluation methodologies fairly straightforward in order to promote greater uptake of SPP modalities in public procurement.

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