

Annex I

Dominica

There is very little up-to-date information on the procurement system in Dominica. The two main reviews are the World Bank's *Country Procurement Assessment Report* of 2003 and the OECS CPAR, also of 2003, which is effectively a reproduction of the World Bank CPAR. The latest review of the procurement system appears to be contained in the WTO's *Trade Policy Review* of October 2007.¹⁰⁸ This latter document indicates that very little has changed since 2003, although new and improved legislation is apparently imminent, as it was in 2003. This assessment is based on these reports. As a member of the Caribbean Community (CARICOM), Dominica is participating in the development of a common policy framework on public procurement in advancing the CARICOM single market economy.

1 Country context

The Commonwealth of Dominica is a small Caribbean island state with a population of approximately 74,000 and an area of 750 sq. km. It achieved independence from the UK on 3 November 1978, but it retains the common law tradition. Dominica is a member of the Organisation of Eastern Caribbean States and CARICOM. Its GDP per capita was around US\$4,450 in 2006. GDP per capita in terms of purchasing power, as estimated by the International Monetary Fund (IMF), was US\$6,764.3. Net aid per capita in 2005 was estimated by the World Bank at US\$409, the highest among OECS-WTO members. Services accounted for 66.2 per cent of GDP in 2005, followed by agriculture (18.5%), manufacturing (8.1%), construction (8.4%), water and electricity (6.4%) and mining and quarrying (0.9%). No employment or wages statistics are available.

Agriculture, specifically bananas, continues to play a dominant role in the Dominican economy. Although the contribution of agriculture to GDP declined from 30 per cent in the mid-1980s to 18.5 per cent in 2005, its share of GDP continues to be higher than in other OECS countries. Moreover, agriculture still employs around one-third of the labour force and is an important earner of foreign exchange. The banana industry has been declining since the 1990s for a number of reasons, among which are the erosion of preferential access to its main export market, the UK, the changing demography of the farming community, high production costs and low productivity.

Dominica produces relatively low value manufactured goods, with production revolving around, *inter alia*, agri-processing, some assembly of plastic and metal goods, and textile production. Agri-industry includes beverage production using a variety of raw materials, including coconuts, citrus and other fruits. It also produces some chemicals, including dental creams, as well as soaps and lotions. Performance in the sector is dependent on the overall performance of one dominant player primarily producing

dental creams and soaps. The services sector includes financial services (reinsurance and banking); tourism and travel-related services (hotel development); recreational, cultural and sporting facilities; and communications.

Dominica's economy has been volatile in the last decade with a severe economic crisis early in the new millennium. Output fell by around 10 per cent in 2001–2002, but growth resumed in 2004 and 2005. The contribution of private consumption to GDP was relatively stable during the period. The shares of both imports and exports fell as a consequence of the crisis, but while the share of imports recovered with resumed economic growth, the share of exports continued to decline. Economic growth has been around or above 3 per cent since 2004. In general, growth since the recovery started has been driven mainly by expansion in services, with strong growth in wholesale and retail trade, telecommunications and construction, which received a boost from public sector projects. Output in manufacturing increased, but in agriculture it was affected by a fall in banana production, partly a result of unfavourable weather.

2 Trade policy

Since the mid-1990s, Dominica's trade policies have been aimed at gradually establishing an open trading environment, while ensuring that domestic producers become more competitive in order to face the increased competition that characterises trade liberalisation. The main objective of Dominica's trade policies has been to maximise exports and export earnings to improve the country's balance of trade position. Dominica has pursued this objective through programmes and measures seeking to expand market share for exports, such as competitiveness-improving and marketing assistance and promotion programmes. This policy has remained broadly unchanged since 2001.

Dominica has also been committed to securing the best 'development-oriented' agreement it can in international trade negotiations, including the Economic Partnership Agreement with the EC and in the Doha Development Round of WTO negotiations. Dominica's key negotiating objective has been to obtain access for its exports, while attempting to reduce the potential negative impact of some obligations, by advocating the need for special and differential treatment, given what it regards as the vulnerabilities of its economy

Dominica's point of emphasis has not so much been market access, which the country has in any event in its main markets of the USA, EC and Canada, but ensuring that the development dimension is put at the centre of both the WTO and EPA negotiations. It notes that in addition to differentiated treatment of member states, the development dimension embodies the critical aspect of securing development assistance to address concerns of domestic production capacity in order to turn opportunities for market access into actual access, and to build or strengthen capacity. The authorities consider that gaining market access will not help the development process if Dominica cannot overcome its supply side constraints.

Dominica participates in a number of regional and preferential trade arrangements: the Caribbean Community (CARICOM and CARICOM Single Market and Economy (CSME); the OECS; the ACP-EC Revised Cotonou Agreement; the US Caribbean Basin Initiative (CBI); the Canadian CARIBCAN; and the Association of Caribbean States (ACS); and is a beneficiary of the General System of Preferences of several industrial countries. Among these, the ACP-EC Agreement, CARICOM, and the OECS have had the greatest impact on the economy of Dominica. The majority of Dominica's exports continue to go to the United Kingdom and to other CARICOM countries.

Dominica enjoys preferential access under the US Caribbean Basin Initiative (CBI). Dominica also enjoys preferential access to the Canadian market through CARIBCAN, mainly for processed and fresh vegetables. Products from Dominica are eligible for the GSP schemes of Australia, Canada, the EU, Japan, New Zealand, Switzerland and the USA. The range of products varies according to each country's scheme.

3 Procurement

Dominica's procurement market is modest. Public finance figures indicate that public sector current expenditure on goods and services totalled EC\$45.9 million (approximately €12 million) in 2006, some 6.8 per cent of nominal GDP, while capital expenditure totalled EC\$84.1 million (approximately €21 million), some 12.4 per cent of nominal GDP. Due to the size of the country, the government carries out limited procurement, with the majority of capital investments being financed by external sources. Even so, the domestic public sector procurement system is inefficient and lacks transparency.

3.1 Legal and regulatory framework

The current rules governing government procurement in Dominica are contained in Finance Administration Act No. 4 of 1994. Procurement for government agencies is centralised for large projects: tenders must be submitted to government tenders boards, established on an ad hoc basis, which tend to base decisions on lowest price considerations. The Minister of Finance issues rules and regulations (Financial Regulations) under the Act, which in effect govern procurement. However, the Financial Regulations only broadly define functions and responsibilities, but contain much detail concerning procurement. There is no specific procurement office or board with policy and oversight functions. Most purchases are made on a ministerial basis, although tenders boards may be established on an ad hoc basis for large purchases (e.g. construction projects). The Minister of Finance is the primary regulatory authority and approves virtually all contracts. The Minister will also generally refer all contracts with a value above EC\$50,000 (approximately €12,000) to the Cabinet. The Minister of Works in practice approves all works contracts above EC\$10,000 (approximately

€2,500). These thresholds are clearly out of date, but there is no mechanism for revision. Whilst these authorities are not set out in the Stores Regulations, the Ministers are filling the vacuum created by the non-existent Central Tenders Board.

Stores Regulations set out rules for stores management, disposal and accounting, and also include some basic procurement rules. These regulations are seriously outdated, however, and refer to procedures that are no longer followed and entities that no longer exist or have never existed (Central Tenders Board). The Stores Regulations were clearly drafted with the procurement of goods in mind, but there are no separate regulations or rules applicable to works or services procurement. It seems that the Stores Regulations are regarded as applicable to such procurement, but this is not made explicit and, in any event, it is wholly opaque. The Regulations do not seem to be publicly available.

The Stores Regulations, as the only explicit set of rules applicable to procurement, do not contain any provisions relating to the following critical issues. There is:

- no clear definition of procurement methods other than competition and the conditions under which they might apply;
- no mention of open tendering used with pre-qualification or in two stages, or by way of lots;
- no provisions relating to the qualification of suppliers and contractors;
- no reference to public bid opening;
- no requirement to return late bids unopened;
- no standard award criteria quantifiable in monetary terms and no requirement to award the contract to the lowest evaluated bidder;
- no standard bidding documents;
- no standard form contracts or any indication of what the contract conditions should be;
- no administrative review of procurement decisions.

In summary, there appears to be no legal or regulatory requirement to publicise procurement-related legal texts. There is also no comprehensive piece of legislation; the applicable rules are scattered among various texts of differing authority. The Ministry of Finance is responsible for making financial and procurement regulations and issuing directions for the procurement of goods, works and services by tender or direct purchase, but these do not appear to be published. It seems that most of the players involved in the public procurement process, in both the public and private sector, are not aware of the procedures.

3.2 Advertising

There is a legal requirement in the Stores Regulations to advertise contract opportunities. This is generally done through the *Gazette*, local press and on the radio. The *Gazette* is published regularly and is available to the public. Works projects are advertised and contractors can be invited to pre-qualify, depending on the complexity of the project. Projects are advertised in local newspapers, with larger projects being advertised in international newspapers, as well as in the *Gazette* and in the broadcast media. Publicised tenders are published domestically, except when regional and international publication is required by a project's funder (e.g. an international financial institution). Even when a project is domestically published, foreign suppliers of goods and services may still bid.

It seems, however, that selective tendering, with a request for a minimum of three quotes, is usually preferred to open tendering, so that advertisements are relatively rare.

3.3 Procedural transparency

The Stores Regulations provide for bidding following public advertisement, as well as a form of restricted tendering, but include no clear definition of the circumstances in which either method should be used or explicit reference to open bidding as the default method. Procurement for small amounts is decentralised. In practice, there is no specified threshold between large and small projects. For the procurement of supplies, local purchase orders are used in many cases and procurement is at ministry level; quotations from three different local suppliers are obtained, and the supplier is chosen on a price-competitive basis. In some cases, decisions also take into account the quality and skill level of the bidder.

In addition, there are no legislative guidelines on qualification criteria, but contractors appear to be listed in an unofficial register, which is not updated on a regular basis. There is no statutory requirement to include evaluation criteria in bidding documents. The bid evaluation and contract award criteria are not fully provided to the bidders and, where they are, tend to be vague. Procuring entities do not consider themselves bound to give reasons for not accepting the lowest tender or any tender. A bid evaluation (as opposed to qualification) can take into account past dealings with the contractor, the past performance of the bidder and the completion date and price, among other factors. It appears that the bidding documents do not contain many formal instructions on the conduct of the procedure. At present, most procurement is on the basis of a short list and the pre-qualification of contractors. Some bidding is done on the basis of publicised tenders. Selective tendering tends to be used for local community projects, where the communities themselves are invited to participate.

Preferences are not granted either to Dominican nationals or to other OECS or CARICOM countries. This is generally not possible, however, for large projects, as there may be no local firms capable of providing the necessary services. Small and micro enterprises are favoured in community projects (e.g. a small road repair project).

3.4 Publication of awards

Contract information should be published in the *Gazette*, but this is not done in practice.

3.5 Review mechanism

There is no independent body to which a supplier or a contractor can address their complaints or report irregularities during a tendering procedure and no formal complaints procedure. Judicial review is possible, but the procedure appears to take 5–7 years.

3.6 The OECS/PPS

Dominica is a member of the OECS, which has set up the Pharmaceutical Procurement Service, designed to improve the use of existing resources by efficient procurement practices.¹⁰⁹ The OECS/PPS is an agency of the OECS, a formal grouping of nine eastern Caribbean countries – Anguilla, Antigua and Barbuda, British Virgin Islands, Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia, and St Vincent and the Grenadines – with a combined population of approximately 550,000. The OECS/PPS was established under a project funded by USAID and by 1989 the scheme was financially self-sufficient. The core function of the OECS/PPS is the pooled procurement of pharmaceuticals and medical supplies for nine ministries of health of the OECS countries. The OECS/PPS presents suppliers with a public sector monopoly, so that products tendered by OECS/PPS are purchased exclusively through annual contracts. It operates a centralised, restricted tendering system in which all approved suppliers are pre-qualified by a vendors' registration questionnaire. Pre-qualification is necessary to assess the quality standards, technical competence and financial viability of competing suppliers. Following a bid solicitation from over 75 international suppliers, the OECS/PPS awards annual contracts, places orders directly with suppliers, and monitors delivery and supplier performance. Prior to the establishment of the OECS/PPS, the OECS countries purchased drugs individually from suppliers by direct negotiation. During the 2001/2002 tender cycle, the annual survey on a market basket of 20 popular drugs showed that regional prices were 44 per cent lower than individual country prices.