



Towards a new vision for Costa Rica's Public Procurement System

**ASSESSMENT OF KEY CHALLENGES FOR THE
ESTABLISHMENT OF AN ACTION PLAN**



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Assessment of key challenges for the establishment of an
action plan

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Foreword

In recent years, Costa Rica's social and economic progress has been remarkable. Momentum from these reforms has enabled the country to launch a significant number of legal initiatives related to the OECD accession process started in 2015. In May 2020, OECD countries decided to invite Costa Rica to become a member of the Organisation.

Representing 12.5% of GDP in Costa Rica, public procurement has a significant impact on the quality of services provided to citizens, and on the economic and social development of the country. The strategic role of public procurement was highlighted during the COVID-19 outbreak, when it was at the front line of the governmental response, especially in healthcare, sanitation, infrastructure and transports. It will also, without a doubt, play a key role in most recovery strategies across the world.

Costa Rica started a major reform of its public procurement regulatory framework in 2019 to align it with OECD instruments and international good practices. Since 2017, the OECD has supported Costa Rica in enhancing key features of its public procurement system that have a strong impact on competition and thus on its efficiency namely related to exceptions to competitive tendering and the public procurement thresholds in place. The OECD findings and recommendations were considered for the ongoing legal reform.

Based on this successful collaboration, the OECD has helped Costa Rica prepare an action plan for five priority areas, mirroring the five key challenges identified by the government and public procurement stakeholders: (i) the institutional framework of the public procurement system; (ii) the strategic use of public procurement; (iii) the professionalisation of the public procurement workforce; (iv) the participation of civil society in the public procurement system and; and (v) the control of the public procurement system.

This report provides key recommendations to Costa Rica on these five priority areas based on the current public procurement regulatory framework, the draft public procurement law, and the results of a survey carried out by the OECD with different stakeholders (contracting authorities, private sector organisations and civil society organisations). While the draft public procurement law includes remarkable improvements in comparison to the present regulatory framework, some areas such as civil society participation, professionalization and the strategic use of public procurement will need further strengthening.

This review was prepared under the auspices of the Working Party of the Leading Practitioners on Public Procurement, within the programme of the OECD Public Governance Committee. It aims to support Costa Rica in successfully implementing an ambitious reform of public procurement that will ultimately align the country with the instruments and most advanced practices of the OECD.

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Executive summary

In Costa Rica, public procurement accounted for 12.5% of GDP in 2018, which is slightly above the OECD average (11.8% in 2017). Given its strategic importance, Costa Rica started reforming its public procurement regulatory framework to align it with international good practices and OECD instruments, namely the 2015 OECD Recommendation on Public Procurement. As of August 2020, Costa Rica is finalising the draft public procurement law (hereafter referred to as “DPPL”).

Given that the regulatory framework has a strong impact on the entire public procurement system, its implementation requires an appropriate action plan. This report focuses on five priority areas identified by all stakeholders within the procurement system: (i) the institutional framework; (ii) the strategic use of public procurement including green procurement, SMEs development, innovation, and Responsible Business Conduct (RBC); (iii) the professionalisation of the public procurement workforce; (iv) the participation of civil society in the public procurement system and; (v) the control of the public procurement system. This report provides an analysis of these areas based on the current public procurement framework, the DPPL (version received in July 2020), as well as responses to OECD surveys carried out with 37 contracting authorities, 3 private sector organisations and 4 civil society organisations. The recommendations provided by the OECD will help Costa Rica prepare an adequate implementation action plan.

Key Findings

- The analysis shows some gaps in the current institutional framework. For instance, central procurement functions are not assigned to any entity. However, the DPPL addresses most of those gaps. It foresees the creation of the Public Procurement Authority (ACP), which will act as a central public procurement authority and its implementing agency, the Directorate of Public Procurement (DCP) within the Ministry of Finance. Both will be in charge of key areas of the public procurement system such as strategic procurement and the professionalisation agenda. Several ministers will participate in the ACP, which might affect its independence.
- Strategic procurement is not yet deeply rooted in Costa Rica yet, which faces challenges such as: (i) the lack of policy coherence between the procurement regulatory framework and other existing frameworks, (ii) the capacity of the procurement workforce, (iii) data collection. The DPPL promotes strategic procurement by defining environmental and social sustainability as general principles of the public procurement system.
- Several weaknesses affect the professionalisation of the public procurement workforce: i) public procurement is not recognised as a professional task, ii) no competency and/ or certification frameworks are in place, and iii) capacity building activities and methodological support are limited. In the DPPL, ACP is mandated to further develop policies on the professionalisation of the public procurement workforce that will be implemented by the DCP. It also mentions the development of a certification framework.

- Civil society participation in public procurement includes consultations for reforming the procurement framework, the oversight of procurement activities and the consultation on citizen's needs. Although some civil society organisations were consulted during the development of the DPPL, participation processes are not yet deeply rooted and the associated mechanisms have not been developed. Furthermore, different stakeholders mentioned that the e-procurement platform SICOP, which is the main source of information on public procurement, is not user-friendly.
- The Comptroller General of the Republic CGR is currently responsible for authorising the use of exceptions to competitive tendering (ex-ante control) and reviewing challenges that affect the effective separation of duties. In the DPPL, the CGR will no longer be in charge of performing ex-ante control. Moving from *ex ante* to *ex post* control requires strengthening the internal control system to make sure that public money is spent efficiently. However, the capacity of internal auditors was identified as a key challenge by different stakeholders. The CGR is entitled to undertake parallel controls as part of its mandate. However, no specific criteria have been set for their implementation. Furthermore, the DPPL mentions that DCP will be in charge of managing risks in public procurement and adopting control measures to mitigate those risks.

Key recommendations

Clarify and improve the public procurement institutional framework

A certain degree of functional and budgetary independence should be granted to the ACP to carry out its responsibilities without operational interference. Costa Rica could offer the possibility of initially seeking a review of any procurement decision against contracting authorities before undertaking legal actions against the CGR or any other review body.

Enhance the uptake of strategic procurement

Costa Rica could consider integrating further mechanisms in its procurement regulatory framework to ensure the uptake of strategic procurement. It could disseminate implementation tools more widely and provide training to contracting authorities. Furthermore, it should ensure policy coherence between the procurement regulatory framework and the existing regulatory frameworks related to strategic procurement. Lastly, it could improve the information collection system regarding strategic procurement.

Improve the professionalisation of the public procurement workforce

Costa Rica could further improve the professionalisation of the public procurement workforce by recognising public procurement as a professional task, improving methodological assistance tools such as manuals, standardised templates, and setting up a help desk, developing certification and competency frameworks and providing capacity-building activities for the public and private sectors. Assessing the capacity of the public procurement workforce will be pivotal to building the professionalisation strategy.

Promote the participation of civil society and citizens in public procurement

Costa Rica could consider the possibility of introducing a wide range of participation mechanisms in its regulatory framework and processes. It could also improve SICOP to allow citizens to access and collect information on public procurement in an efficient and user-friendly way.

Reinforce ex post control and the internal control system

Before eliminating the ex-ante control by the CGR, it will be essential to evaluate the efficiency and effectiveness of the current internal control system, and reinforce the capacity of internal auditors. Costa Rica could also consider promoting the use of the parallel control on specific projects as one of its *ex post* control mechanisms. Finally, it could benefit from developing a risk management strategy in public procurement, considering all the risks that could affect the functioning of the procurement system.

Introduction

Public procurement is a crucial pillar of services delivery for governments. Because of the sheer volume of spending it represents, well-governed public procurement can and must play a major role in fostering public sector efficiency and establishing citizens' trust. Well-designed public procurement systems also contribute to achieving pressing policy goals such as environmental protection, innovation, job creation and the development of small and medium enterprises.

In Costa Rica, public procurement represents 12.5% of GDP in 2018. (Controlaría General de la República de Costa Rica, 2019^[1]) Aware of the strategic role that it plays, Costa Rica started the process of reforming its public procurement regulatory framework to align it with international good practices. This reform needs to be supported by a concrete implementation action plan aimed at improving not only the regulatory framework but also the processes implemented by the different stakeholders of the public procurement system.

Since 2017, the OECD has supported Costa Rica in strengthening specific features of their public procurement system, with the financial support of the Embassy of the United Kingdom in Costa Rica. The OECD supported Costa Rica in i) enhancing competition in public procurement through a thorough assessment of exceptions to competitive tendering, and, ii) reviewing the threshold system in place for greater efficiency.

Costa Rica requested support from the OECD to provide key recommendations in the following priority areas:

- The institutional framework of the public procurement system;
- The strategic use of public procurement including green public procurement, SMEs development, innovation, and RBC;
- The professionalisation of the public procurement workforce;
- The participation of civil society in the public procurement system and;
- The control of the public procurement system with a focus on the ex-post controls operated by the CGR.

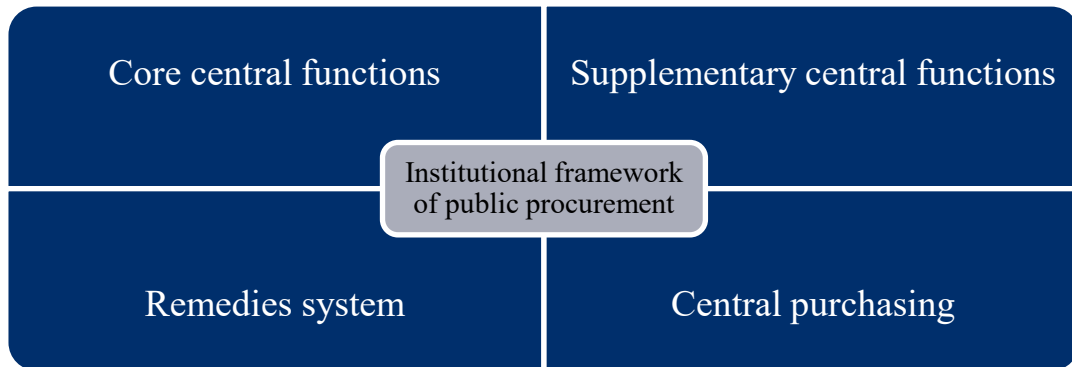
This report consists of five sections mirroring the five priority areas mentioned above. The diagnosis is based on the OECD analysis of the current public procurement regulatory framework and the draft public procurement law- DPPL, and the results of a survey carried out by the OECD, in February 2020, with different stakeholders (hereinafter referred to as “OECD survey”). The results of the survey reflect the responses from 37 contracting authorities, 3 private sector organisations and 4 civil society organisations.

1 Institutional framework in Costa Rica

Introduction

Sound public procurement systems require effective institutions to be put in place with the necessary functions described in the legal framework. As highlighted in the 2015 OECD Recommendation of the Council on Public Procurement, countries need to have a clear and stable institutional framework that is essential to increase participation in doing business with the public sector. This is a key starting point for ensuring a sustainable and efficient public procurement system (OECD, 2015^[1]). Setting up a sound institutional framework is often a priority for governments. Figure 1.1 describes the four key institutional elements required for a well-functioning public procurement system.

Figure 1.1. Main functions of the institutional framework of the public procurement system



Source: Created and adapted based upon (OECD-SIGMA (2016), 2016^[2])

Core central functions usually include i) the preparation of legislative and regulatory public procurement frameworks; ii) international co-ordination functions; and iii) monitoring and compliance assessment functions. The supplementary central functions typically include i) advisory and operations support functions; ii) professionalisation and capacity-strengthening functions; and iii) the supervision and maintenance of an e-procurement platform.

The allocation of these functions between different institutions differs among countries. Indeed, these functions can be concentrated in one central institution such as in Austria and Hungary or they can be assigned to several different institutions such as in Germany or Lithuania.

In Costa Rica, several institutions are in charge of the public procurement system: the General Directorate of Asset Management and Public Procurement (La Dirección General de Administración de Bienes y Contratación Administrativa, DGABCA) of the Ministry of Finance (Ministerio de Hacienda) and the Comptroller General of the Republic (La Contraloría General de la República, CGR). In addition, the draft public procurement law (hereinafter referred to as "DPPL") foresees the creation of a new body, the Public Procurement Authority (Autoridad de Contratación Pública, ACP), which will act as a central public procurement authority. In addition, DGABCA will be replaced by the Directorate of Public Procurement (Dirección de Contratación Pública, DCP) that will be established within the Ministry of Finance within two years after the entry into force of the DPPL. Table 1.1 summarises the mandates of each institution:

Table 1.1. Functions of central public procurement system in Costa Rica

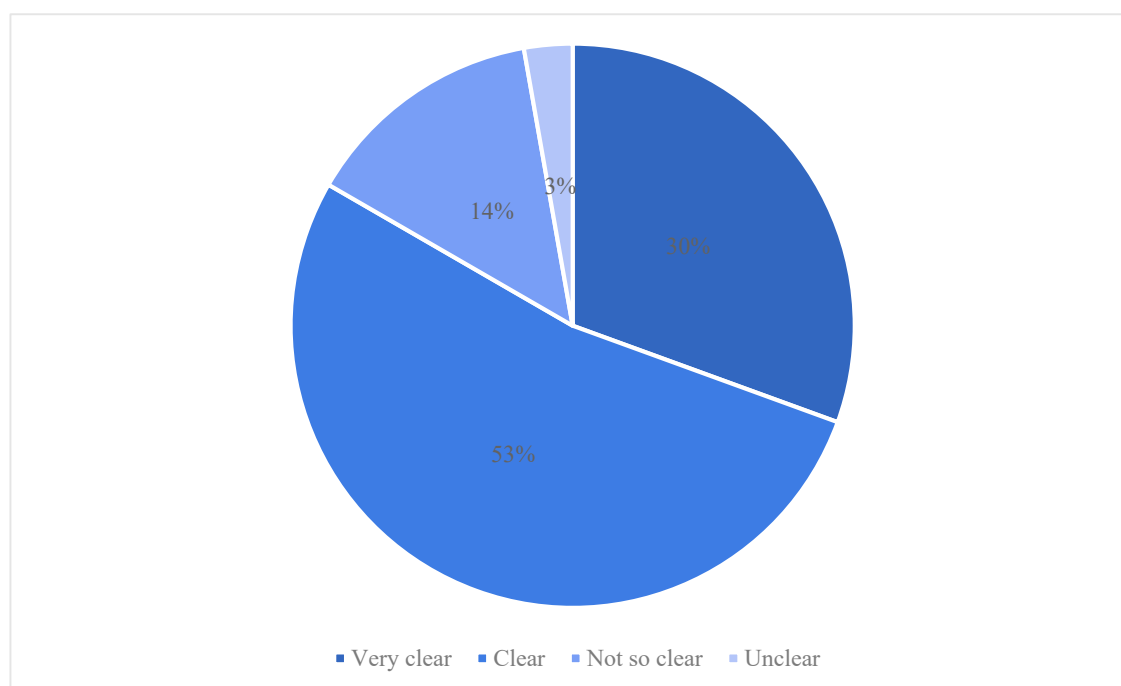
Function	Under the current legal framework				Under the DPPL (No. 21546)			
	DGABCA	CGR	COMEX	No institution	DCP	CGR	COMEX	ACP
Primary policy and legislative functions				✓				✓
Secondary policy and regulatory functions	✓				✓			✓
International co-ordination functions	✓		✓		✓		✓	
Monitoring and compliance assessment functions	✓	✓			✓	✓		
- Preparation of an annual report on the functioning of the national public procurement system				✓	✓			
- Collection of statistics on public procurement system	✓	✓			✓	✓		
- Auditing, control, inspections, checking of legal compliance		✓				✓		
- Authorisation by granting prior approval of procurement process		✓						
Advisory and operations support functions	✓				✓			
Professionalisation and capacity-strengthening functions				✓	✓			✓
E-procurement platform	✓				✓			
Remedies mechanism		✓				✓		
Central purchasing	✓				✓			✓

Note: Regarding the approval of procurement process, under the current regulatory framework, the CGR is in charge of i) the prior approval of exceptions to competitive procedures and ii) the approval of contracts (*refrendo*). Under the DPPL the CGR will not grant anymore prior approval for exceptions.

Source: Prepared based on (La Asamblea Legislativa de la República de Costa Rica, 1995^[31]) (La Presidencia de la República; Ministerio de Economía y Finanzas, 2015^[41]), and the DPPL

Based on the OECD survey, the institutional framework is perceived as ‘not so clear’ or ‘unclear’ for 17% of contracting authorities (see Figure 1.2). These results suggest the need to improve the clarity of the institutional framework.

Figure 1.2. Feedback from surveyed contracting authorities on the level of clarity of the institutional framework of public procurement in Costa Rica



Note: 36 contracting authorities provided a valid answer.

Source: Prepared in accordance with the responses to the OECD survey

The following sections provide detailed information on each of the public procurement functions, and suggest recommendations to enhance the institutional framework of the public procurement system of Costa Rica.

Central and supplementary function

In the current public procurement regulatory framework (The law on public procurement- LCA, and the regulation of this law - RLCA), different entities are in charge of the central and supplementary functions in Costa Rica: DGABCA and CGR. However, other entities and bodies also play a key role in these functions such as the Legislative Assembly and the Ministry of Foreign Trade (Ministerio de Comercio Exterior, COMEX).

DGABCA is in charge of managing the public procurement system for the central government. Based on a report of the National Bank of Costa Rica published in 2010, the expenditures controlled by DGABCA represented less than 10% of the total procurement volume of the country. However, according to DGABCA, this share has increased in the last years. Its mandate is defined by the Law of Financial Administration of the Republic and Public Budget (Ley de Administración Financiera de la República y Presupuestos Públicos).

Box 1.1 describes DGABCA's mandate in relation to public procurement. Amongst other functions, DGABCA establishes policies and guidelines and is also in charge of managing SICOP (Sistema Integrado de Compras Públicas, Integrated System of Public Procurement), the e-procurement platform for all public entities.

Box 1.1. Mandates of DGABCA in relation to public procurement

Article 99 of the Law of Financial Administration of the Republic and Public Budget, describes the mandate and role of DGABCA in the public procurement system as follows:

- Undertake necessary actions to establish policies related to public procurement;
- Evaluate procurement processes regularly including at the end of the process;
- Propose necessary amendments so that the policies and procedures used in procurement processes protect the public interest;
- Provide guidance to contracting authorities of the central government on the elaboration of procurement plans through the provision of guidelines;
- Supervise contracting authorities of the central government in order to ensure the proper implementation of procurement processes, storage and distribution of goods;
- Develop studies aiming at checking quality standards, and promote techniques to reduce costs, enhance procedures and protect the environment;
- Keep track of the procurement outside the central government and payment methods, as well as prepare essential information to process the exemptions based on the legal framework;
- Develop specific codifications based on spending that will be used to create catalogues of goods and supplier registries;
- Certify officials in procurement departments of contracting authorities of the central government to accomplish their mandates;
- Propose its own organisation, which will be established through a regulation;
- Request information from contracting authorities for the accomplishment of its mandate and functions;
- Ensure that the adequate control of inventories are executed by officials in charge of this task;
- Prepare an annual report on the situation and variations of the assets of the central government, as well as on the actions undertaken for the proper management of those assets;
- Promote the improvement of the cadastral and registry of ownership of the central government and require the technical body to preserve the real estate assets of the central government; and
- Other mandates derived from other laws and regulations.

Source: (La Asamblea Legislativa de la República de Costa Rica, 2001^[5])

The Comptroller General of the Republic (La Contraloría General de la República, CGR) is an auxiliary body of Congress with functional and administrative independence in the performance of its duties. The CGR is a governing body of control in charge of monitoring public finance in accordance with the Political Constitution. Its jurisdiction covers all entities that manage public funds. Three main functions of the CGR are related to public procurement (La Asamblea Legislativa de la República de Costa Rica, 1994^[6]):

- ex-ante control: verification of the legal compliance of certain government procurement contracts such as the approval of use of exceptions to ordinary procurement procedures
- ex-post control: controlling how public entities spend public funds to assess their compliance with the regulatory framework in place.
- remedies body: reviewing public procurement decisions

The DPPL foresees the creation of a new body: the Public Procurement Authority (Autoridad de Contratación Pública, ACP). The ACP will act as a central public procurement authority. It will be comprised of the following three ministers (or their vice-ministers): the Minister of Finance (chair); the Minister of Science, Technology and Telecommunications; and the Minister of National Planning and Economic Policy. The ACP can invite experts from other public entities to provide their technical advice, although they do not have the voting power for making decisions. The ACP will be mandated to publish a National Plan for Public Procurement (Plan Nacional de Compras Públicas, PNCP) within two years after the entry into force of the DPPL. The Directorate of Public Procurement (Dirección de Contratación Pública, DCP), which will be established within the Ministry of Finance, will take over the mandate of DGABCA and will act as the implementing agency for the ACP. The director and sub-director of the DCP will be nominated by the ACP for a period of six-years. Box 1.2 provides a full description of the mandate of the ACP.

Box 1.2. Mandate of the Public Procurement Authority (ACP)

The ACP will act as a central public procurement body with the following mandates:

- Proposing the National Plan for Public Procurement (PNCP). The PNCP will be effective for six years, and may be adjusted annually. It should be developed with the aim to improve efficiency in public procurement, with high standards of quality, integrity, transparency and satisfaction of the public interest
- Proposing regulatory modifications related to public procurement and simplify public procurement procedures
- Preparing the guidelines to the government, after consulting different stakeholders including citizens, at least for the following:
 - i) Establishing the relationship between the procurement plan and the budget with the PNCP and institutional plans
 - ii) Ensuring the standardisation of goods and the promotion of consolidated purchasing to generate savings through economies of scale
 - iii) Promoting regional development, innovation, inclusion, sustainability and promotion of SMEs through public procurement.
 - iv) On the professionalisation of the public procurement workforce, establishing the certification of public procurement workforce, continuous trainings and accreditation of contracting authorities
- Issuing guidelines for private institutions where they are not subject to the DPPL due to being below the threshold set for open tender (licitación mayor)
- Other mandates specified in the DPPL

The DCP within the Ministry of Finance will act as the implementing agency for the ACP, in its technical advisory capacity for public procurement. Its decisions will be binding for the Central Government. It has the following mandates:

- Preparing and proposing the National Plan for Public Procurement and its updates to the ACP.
- Suggesting regulatory modifications related to public procurement and simplifications of public procurement procedures to the ACP.
- Managing the professionalisation of its own officials as well as public procurement officials from public entities, and the accreditation of contracting authorities.
- Exercising leadership in the use of electronic platforms applied in public procurement in accordance with the provisions of the DPPL. The DCP will administer the unified digital system and may suggest that the ACP considers the subsequent outsourcing of it.
- Managing the electronic catalogues of goods, the price database, and supplier registration
- Managing risks related to public procurement and implementing control measures to mitigate them
- Establishing comparative performance indicators to verify the compliance of contracting authorities with the national public procurement plan or institutional plans. An evaluation should be carried out at least once each year to determine improvement areas, the degree of efficiency and fulfilment of public procurement and to disseminate best practices, as well as to prepare statistics for effective accountability and informed decision-making. In this evaluation, the institutions must be classified according to the quality of their management of public procurement (accreditation of contracting authorities)
- Requesting information from public entities for the accomplishment of its mandate and functions
- Establishing quality standards in order to evaluate the development of procurement procedures and to assess the quality of the goods, works and services received
- Standardising and provide templates to public entities for procurement planning, specifications, contracts, and monitoring the execution of contracts
- Proposing its own organisational structure which will be determined by the regulation
- Implementing the agreements adopted by the ACP
- Carrying out analytical work on the public procurement system to increase its efficiency and effectiveness
- Carrying out consolidated purchasing for the central government and proposing carrying out joint procurement with decentralised entities
- Other mandates specified in the DPPL

Source: Article 130 and 131 of the DPPL

According to Article 1, the DPPL covers all public entities from all levels of government that are either partially or fully using public funds for their public procurement activities. The different functions assigned to each institution are outlined in the following sections. They map the core functions of the public procurement system of Costa Rica under the current public procurement regulatory framework and the DPPL.

Primary and secondary policy and legislative functions

Primary policy and legislative functions refer to the development of procurement policies aimed at setting the overall legal framework of public procurement. Key functions include i) preparing and drafting the primary public procurement regulatory framework; ii) leading the working group in the drafting process; iii) organising the consultation process with the main stakeholders of the procurement system; and iv) taking part in other legislative activities. (OECD-SIGMA (2016), 2016^[2])

In Costa Rica, no institution is expressly assigned with the task of preparing the public procurement legal framework. Indeed, any interested party could suggest the development of a draft legal framework to the Legislative Assembly. A working group would then be established to advance the development of the draft legal framework. For the DPPL, the CGR took the initiative of preparing the draft text in close collaboration with DGABCA, members of the Legislative Assembly and other relevant stakeholders.

Secondary policy and regulatory functions refer to the development of regulations to implement the primary law on public procurement in specific areas or to provide implementing tools (operational guidelines, standard documents/templates) in support of the application of the primary law.

Under the current legal framework, DGABCA is in charge of establishing public procurement policies including the regulation of the law and implementing tools. However, as aforementioned, DGABCA's mandate only covers the central government entities. This function will remain within the DCP when it takes over on the mandate of DGABCA under the DPPL as an implementing agency of the ACP. The technical advisory capacity of the DCP in public procurement only has binding decisions for Central Government.

The DPPL also mentions that the ACP can put forward modifications of the public procurement regulatory framework to the government, with the assistance of the DCP who can consult different stakeholders. However, it is not clear who the ACP will give those modifications to and furthermore what channels are available for interested parties to suggest changes to the public procurement regulatory framework within the government. This clarification could be addressed in the Regulation of the law.

In addition, the OECD recommends procurement authorities to be situated at a high level with authoritative standing in government to be effective, including a degree of functional and budgetary independence to enable them to carry out their responsibilities without interference. Adequate funding is necessary to ensure proper staffing and resources keep the services at the level of quality required. No information was available on the funding that will be received by the ACP to perform its functions. However, the composition of the ACP (Ministers or Vice-Ministers) might affect the independence of the public procurement authority.

Recommendations:

Costa Rica should consider designating the institution within the government that the ACP submits modifications of the public procurement regulatory framework to ensure the clarity of the institutional framework.

Costa Rica should consider providing the public procurement authority a certain degree of the functional and budgetary independence to enable it to carry out its responsibilities without interference.

International co-ordination functions

International co-ordination functions mean acting as a national focal point for international regulatory activities. In Costa Rica, the responsibility of this function is shared between DGABCA and the Ministry of Foreign Trade (Ministerio de Comercio Exterior, COMEX). For example, DGABCA is in charge of representing the country in international fora such as the Inter-American Government Procurement Network (RIGG).

COMEX is in charge of all issues related to trade. As public procurement is one of the areas highly impacted by trade agreements, COMEX also has a role when it comes to international co-ordination on public

procurement. Indeed, COMEX represents Costa Rica in the World Trade Organization, including for the Government Procurement Agreement (GPA). Table 1.2 describes all the trade agreements Costa Rica has with different countries on public procurement activities. In addition, As of May 2020, Costa Rica was invited to become an OECD member by the OECD Council. The accession process, including issues related to public procurement, was co-ordinated by COMEX.

Table 1.2. Public procurement and free trade agreements to which Costa Rica is a party

Panama	Chile	CARICOM	China	Mexico	CAFTA-DR	AACUE	Singapore	EFTA	Peru	Colombia
General provisions on national treatment	No public procurement chapter	The chapter will be applicable when the Coverage Annex is agreed and put into effect.			Provisions on:					
					<ul style="list-style-type: none">National treatment.Time limit to submit offers and challenge decisionsAgreements on publicationSpecial treatment for SMEsApplicable commitments for contracting equal to or above the coverage thresholds					
					Thresholds					
					Central Government					
					(Supreme Powers, Ministries, Ombudsman's Office)					
					Goods and services					
					USD	SDR ¹	SDR	SDR	SDR	USD
					77 533	130 000	130 000	130 000	95 000	77 494
					Construction services					
					USD 7 358 000	SDR 5 000 000			USD 7 358 000	
					Sub central level (Municipalities)					
					Goods and services					
					USD	SDR	SDR	SDR	SDR	USD
					522 000	355 000	400 000	355 000	355 000	522 000
					Construction services					
USD	SDR 5 000 000			USD 7 358 000						
7 358000										
Autonomous Institutions										
Goods and services										
List A	List A	SDR	List A	List A	List A					
USD	SDR 200	400 000	SDR 200	SDR 160	USD 250 00					
200 000	000		000	000	List B					
List B:	List B		List B	List B	USD 589					
USD 589	SDR		SDR	SDR 400	000					
000	400 000		400 000	000						
Construction services										
USD	SDR 5 000 000			USD 7 358						
7 358 000	000									

Note: CARICOM: Caribbean Community, CAFTA-DR: Dominican Republic-Central America FTA, AACUE: Association Agreement between Central America and the European Union, EFTA: European Free Trade Association. FTAs with Panama y Chile do not include thresholds. FTAs with CARICOM, China and Canada do not have a public procurement chapter. The public procurement chapter of the FTA with Mexico will be applicable when the Coverage Annex is agreed and put into effect. Special Drawing Rights (SDR):

The SDR is an international reserve asset, created by the International Monetary Fund- IMF in 1969 to supplement its member countries' official reserves.

Source: (OECD, 2019^[7])

Monitoring and compliance assessment functions

The monitoring of public procurement includes any systematic observation that is conducted in order to assess the way in which the development and functioning of the system, as well as the desired (targeted) state of play as defined by policy makers, has been achieved. The compliance assessment functions include methods to detect and remedy irregularities in public procurement (OECD-SIGMA (2016), 2016^[2]). Those tasks include:

- Preparation of an annual report for the government or parliament on the functioning of the national public procurement system;
- Collection of statistics on the public procurement system;
- Auditing, control, inspections, checking of legal compliance;
- Authorisation by granting prior approval of procurement processes, such as technical specifications and the use of less competitive procedures;

Under the current legal framework, CGR plays a key role in the monitoring and compliance assessment functions. The CGR performs an ex-ante control of procurement procedures to authorise the use of some exceptions to open and competitive procedures. It also performs ex-post control of procurement procedures to monitor their legal compliance.

The collection of statistics can be considered as a shared responsibility between DGABCA and CGR. On the one hand, DGABCA can request information from contracting authorities for the accomplishment of its mandates, and collect statistics from SICOP. On the other hand, contracting authorities must submit information related to public spending to CGR to perform its ex-post control. The CGR then publishes the information related to public procurement on a dedicated website “*Consultations on Public Procurement*” (Consultas sobre Contratación Administrativa). (CGR, n.d.^[8]). This information is based on the data from the Integrated System of Procurement Activities - SIAC (Sistema Integrado de la Actividad Contractual). SIAC is a system managed by the CGR that provides key information on public procurement spending of entities subject to the CGR oversight.

Under the DPPL, DCP is entitled to request information from contracting authorities for the execution of its mandate. DCP is also mandated to establish comparative performance indicators of public procurement. The evaluation should be carried out at least once a year in order to identify the challenges in public procurement system, as well as to prepare statistics for effective accountability and informed decision-making. However, no information was provided on the information that will be requested, the indicators that will be set and the format of data collection.

DGABCA has previously published reports on the public procurement system. For instance, it prepared the 2015 evaluation report of the public procurement system of Costa Rica, using the previous version of the Methodology for Assessing Procurement Systems (MAPS) (OECD, n.d.^[9]) assessment, and the 2016 report on the situation of immobile lease at the central government (Dirección General de Administración de Bienes and y Contratación Administrativa, Ministerio de Hacienda, 2015^[10]) (Dirección General de Administración de Bienes and y Contratación Administrativa, Ministerio de Hacienda, 2016^[11]).

Recommendation:

Costa Rica should consider defining the information and data requested from contracting authorities taking into account the objectives set by policymakers. The e-procurement system should play a key role in data collection to avoid undue administrative burden.

Advisory and operations support functions

Advisory and operations support functions refer to the following: supporting contracting authorities and economic operators so that they can act efficiently and in compliance with national legislation; organisation of a help-desk to provide legal and professional support on a daily basis; development of guidance systems

and operational tools such as methodologies for tender evaluation; and issuance of commentaries on various aspects of public procurement. (OECD-SIGMA (2016), 2016^[2])

Under the current legal framework, DGABCA is responsible for supervising contracting authorities of the central government in order to ensure the proper implementation of procurement processes. (La Asamblea Legislativa de la República de Costa Rica, 2001^[5]). DGABCA has previously issued some guidelines such as the one on evaluation criteria methodology for strategic procurement, minimum information to upload in SICOP, and preventive measures to fight against collusion in public procurement (DGABCA, 2017^[12]). DGABCA currently manages the SICOP helpdesk. However, other key advisory and support functions are not yet performed and/or assigned to any institutions. This includes the administration of an overarching helpdesk to support contracting authorities and economic operators when they have any questions in relation to public procurement. The DPPL also does not assign the administration of a helpdesk to support contracting authorities and economic operators to any institution.

Recommendation:

Costa Rica should consider establishing a global helpdesk to provide support on a daily basis to contracting authorities and economic operators in need.

Professionalisation and capacity-strengthening functions

Professionalisation and capacity-strengthening functions are the key to a well-functioning procurement system (see Chapter 3). Those functions refer to increasing the capacity and motivation of the public procurement workforce including in the development of training programmes; establishment of certification frameworks and competency models; and facilitation of independent teaching and research with universities and private companies. (OECD-SIGMA (2016), 2016^[2])

Professionalisation and capacity-strengthening functions are not directly assigned to any institution in the current regulatory framework. However, the DPPL mainly assigns them to the ACP and DCP. The ACP is mandated to further develop policies on the professionalisation of the public procurement workforce that will be implemented by the DCP within the Ministry of Finance, as the implementing agency for the ACP. Furthermore, Article 9 of the DPPL mentions that the DCP and COMEX will co-ordinate capacity-building activities on international trade instruments.

E-procurement platform

E-procurement refers to the use of information and communication technologies (ICT) in public procurement. The use of ICT in procurement has several benefits, such as increasing transparency, the monitoring of public procurement spending, facilitating digital access to public tenders, reducing direct interaction between procurement officials and companies at moments of high integrity risk, increasing outreach and competition, but also allowing for easier detection of irregularities. The digitalisation of procurement processes strengthens anti-corruption controls and detection of integrity breaches, and it provides audit services trails that may facilitate investigation activities. (OECD, 2016^[13]) The management and administration of the e-procurement platform should be assigned to a specific entity in close collaboration with the institution or body in charge of the regulatory and policy framework.

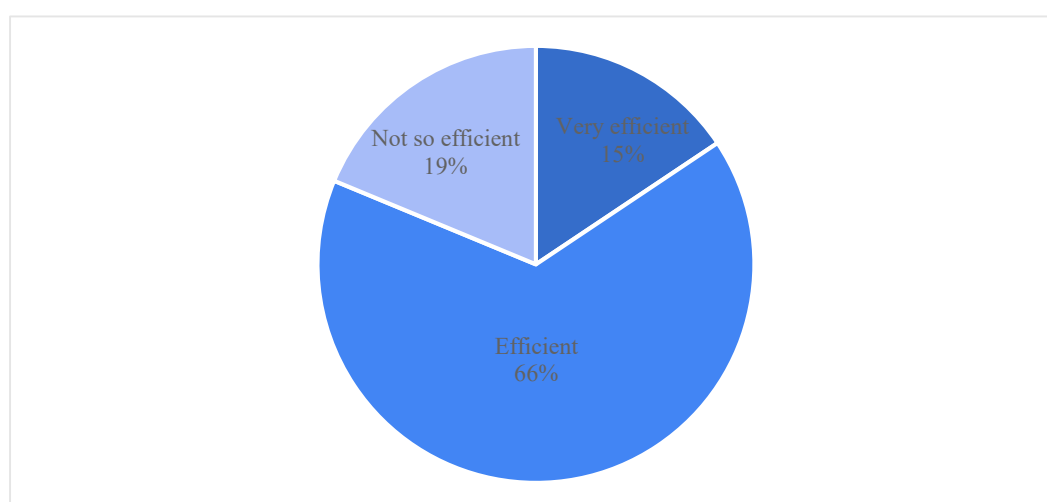
Under the current regulatory framework, DGABCA is in charge of running the e-procurement platform SICOP. This situation will remain unchanged under the DPPL. DCP, which will be taking on the roles of DGABCA, will be in charge of administering the unified digital system.

Since 2016, it is mandatory for all contracting authorities and bidders to use SICOP. However, in practice, SICOP's uptake is still relatively limited, as only 84 % of public entities were using it in January 2020 (Radiográfica Costarricense, 2020^[14]). The OECD survey shows that 11% of the surveyed contracting authorities are not using SICOP yet. Amongst the reasons mentioned for not complying with this legal requirement was the cost overheads of introducing SICOP. This survey also shows that the majority of

contracting authorities using SICOP (81%) have a positive opinion on the efficiency of the platform citing it as either “Very efficient” or “Efficient” (see Figure 1.3).

Figure 1.3. Feedback from surveyed contracting authorities on the efficiency of SICOP

Most contracting authorities admit that the SICOP made public procurement processes efficient and transparent. However, they also state that the system leaves room for improvement.



Note: 32 contracting authorities provided a valid answer. No entities selected the option “Inefficient”

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey

Whilst the surveyed contracting authorities have a largely positive opinion on the efficiency of the platform, they also gave feedback on different issues and challenges to address such as:

- The system does not always respond to contracting authorities needs
- The system requires unnecessary or repetitive processes
- The system is not user-friendly for information collection
- The lack of compliance with the regulatory framework
- The system is not intuitive or well-structured
- The system is not adapted to the procurement of public works

The OECD survey also showed that the private sector has different views on the efficiency of the e-procurement system. This demonstrates a need to strengthen the institutional framework for e-procurement, further involving the final users in SICOP’s developments.

Recommendation:

Costa Rica should enforce the mandatory use of SICOP and improve the system to meet the user’s needs.

Central Purchasing Body

The OECD Recommendation of the Council on Public Procurement highlights the need for countries to “develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money”. (OECD, 2015^[11]) Centralised purchasing is one of these ‘efficiency tools’ and it has been a major driver of the performance of public procurement systems in many OECD countries. Indeed, the benefits of centralised purchasing activities – such as better prices through economies of scale, lower transition costs and improved capacity and expertise - are widely acknowledged. (OECD, 2019^[15]).

Centralisation requires the establishment of a specific entity that is called a “Central purchasing body” (CPB) that may have one of the following three roles: i) to acquire goods or services intended for one or more contracting authorities; ii) to award public contracts for works, goods or services intended for one or more contracting authorities; or iii) to conclude framework agreements for works, goods or services intended for one or more contracting authorities. (OECD, 2019^[15])

Under the current regulatory framework, DGABCA is acting as a CPB for the central administration. Indeed, it is responsible for managing framework agreements in accordance with Article 103 of the LCA and Article 115 of the RLCA. As of 2019, DGABCA is in charge of 12 framework agreements covering different procurement categories such as security and cleaning services, tires for vehicles and office supplies. However, no information is available on the public procurement volume covered by these framework agreements.

Under the DPPL, the ACP is responsible for defining the strategic use of consolidated purchases, while the DCP, as the implementing agency for the ACP, is mandated to implement it.

Remedies system

Remedies are legal actions that allow economic operators to request the enforcement of public procurement regulations, and their rights under those regulations, in cases where contracting authorities either intentionally or unintentionally fail to comply with the legal framework for public procurement. (OECD-SIGMA, 2011^[16]) However, regulatory frameworks may encourage the settlement of disputes without recourse to legal action by first seeking review with the contracting authority.

In Costa Rica, under the current regulatory framework, the CGR is the main body in charge of the remedies system. However, when challenges concern tender documentation, the CGR is solely the remedy body used for open tender; for all other procedures, complaints are brought before contracting authorities (Art. 81 of the LCA). When challenges concern procurement decisions (contract award decisions), the CGR is the main remedies body above threshold procurements (Article 84 of the LCA), while contracting authorities take on this role for procurements below threshold (Article 91 of the LCA).

The OECD survey shows that only 50 % of contracting authorities consider that the remedy system is “efficient.” Contracting authorities identified a number of challenges related to the remedies system, including the speed of the process (slow) and the lack of reasonable justification from bidders challenging procurement decisions. However, the private sector has positive views on the efficiency of the current remedy system. The survey results echo the result of the MAPS assessment carried out in 2015 where 82% of suppliers (400 total suppliers) expressed their satisfaction with the remedy system in place. This assessment also showed that 51% of suppliers recognised the need to change the system. (DGABCA, 2015^[17])

In addition, in the current legal framework, the CGR is responsible for authorising the use of exceptions and reviewing challenges. The current situation is not aligned with international good practices, given that an effective separation of duties does not exist (OECD, 2019^[7]). However, in the DPPL the CGR will be no longer in charge of performing ex-ante control for authorising the use of exceptions to competitive tendering which means that the separation of duties will be ensured (see previous section).

Under the DPPL, the remedies system is simplified as all complaints are put before the CGR above a unified threshold (licitación mayor). Below this threshold, complaints are put before contracting authorities instead. Therefore, the system creates differing processing of complaints based on their procurement value. Based on a previous analysis of the CGR on the speed of the process, the DPPL foresees a shorter timeline for appeal decisions (from 40 to 30 days) for tenders above the threshold. In addition, Article 95 foresees a penalty for bidders challenging procurement decisions without reasonable justifications (recursos temerarios). Challenges are considered as “without reasonable justifications,” when the appellant abuses the remedy system with unfounded reasons and bad faith. However, although the challenges might be well-founded, this provision might restrain the private sector from challenging decisions. This in turn might impact the participation of the private sector to public procurement opportunities.

Recommendations:

Costa Rica should provide the possibility of initially seeking a review of any procurement decision against contracting authorities before undertaking legal actions against the CGR or any other review body.

Costa Rica could further specify the situations where challenges are considered as “without reasonable justifications” to avoid a negative impact on the participation of the private sector to public procurement.

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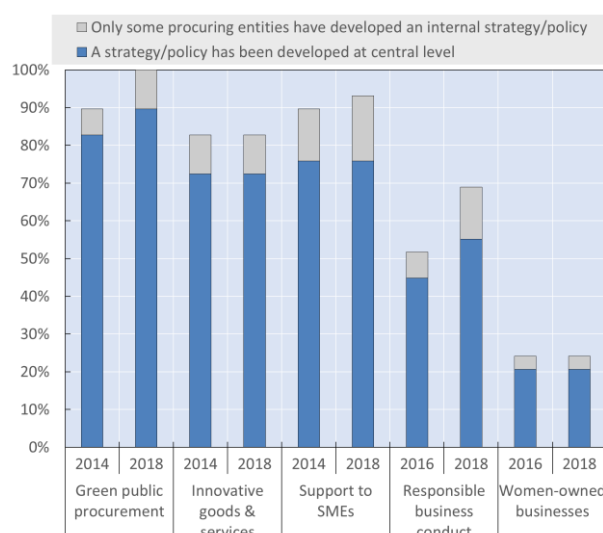
2 Strategic Procurement

Introduction

Public procurement is a critical pillar of services delivery for governments and has become a strategic tool for achieving key policy objectives. Indeed, policies ranging from innovation, to SMEs development, to sustainability, to tackling global challenges such as climate change, and promoting socially responsible supply chains can be addressed through public procurement (OECD, 2018^[1]). Therefore, the 2015 “OECD Recommendation of the Council on Public Procurement” (hereinafter referred to as the “OECD Recommendation”) calls upon the countries to (i) use public procurement to pursue complementary policy objectives while balancing them against the primary objectives, (ii) develop an appropriate strategy, and (iii) employ appropriate impact assessment methodology to measure its effectiveness (OECD, 2015^[2]).

Countries are progressively using public procurement as a strategic lever to enhance the uptake of different policy objectives. As shown in the Figure 2.1, all OECD countries have developed green public procurement policies at least at some level of the public sector. The majority of the OECD countries also have policies for SMEs’ access to public procurement and, to a lesser extent, for stimulating innovation. During the past two years, there has been an upward trend in the development of policies addressing responsible business conduct (RBC), while just a few countries have adopted policies to support women-owned businesses.

Figure 2.1. Evolution of the strategic use of public procurement in the OECD countries



Source: (OECD, 2019^[3])

The strategic use of public procurement is in line with the 2030 Agenda for Sustainable Development, known as the Sustainable Development Goals (SDGs) (see Figure 2.2). For instance, SDG 12 on Responsible Consumption and Production calls for the implementation of sustainable public procurement policies and action plans (SDG 12.7). SDG 16 is related to strong institutions and the need to develop effective, accountable and transparent institutions at all levels to better manage public funds (SDG 16.6). With government leadership, public procurement can contribute to a more resource-efficient economy and encourage the development of new, sustainable products and services, and promote responsible ways of producing and consuming benefiting society as a whole. (United Nations, 2015^[4]). The same approach is reflected in the 2018 revision of the MAPS, which takes into consideration the SDGs and the relevant international procurement frameworks and standards.

Figure 2.2. Sustainable Development Goals (SDGs)



Source: (UNDP, n.d.[5])

As described in Table 2.1, Costa Rica has policies, technical regulations and guidelines for each dimension of strategic procurement: SME development, green public procurement, innovation, and responsible business conduct (RBC). The DPPL also comprises mechanisms to further the uptake of strategic procurement. This part of the chapter aims to describe the current state of play in Costa Rica, examine the integration of the different policy objectives in public procurement and provide the country with recommendations.

Table 2.1. Regulatory frameworks and policies related to strategic procurement

Name	Year	SMEs	GPP	Innovation	RBC
Regulatory frameworks of public procurement					
Law of Public Procurement (LCA)	1995	✓	✓	✓	✓
Regulation on the Law of Public Procurement (RCLA)	2006	✓	✓	✓	✓
Draft Law of Public Procurement (DPPL)	2019	✓	✓	✓	✓
Policies for sustainable procurement					
National Policy of Sustainable Public Procurement	2015	✓	✓	✓	✓
Technical regulations and guidelines for sustainable procurement					
Technical Regulations for the Application of Sustainable Criteria in Public Procurement and Guideline for its Implementation	2015	✓	✓	✓	✓
Practical Guideline for the Sustainable Procurement in the Public Sector			✓		
Social Criteria Guide in Public Procurement Processes in Costa Rica					✓
Other legal frameworks related to strategic procurement					
Law for the Strengthening of Small and Medium Enterprises	2002	✓			
Special Regulation for the Promotion of SMEs in the Public Procurement of Goods and Services	2006	✓			
Integrated Waste Management Law	2010		✓		

General Regulations on the Integrated Waste Management Law	2012		✓		
Law for Creation of the Costa Rican Social Security Institution	2000				✓
Law on the prohibition of labour discrimination	1960				✓
Children and Adolescents Code	1998				✓
Law on the Prohibition of Dangerous and Unhealthy Work for Adolescent Workers	2011				✓

Note: GPP refers to “Green Public Procurement”. RBC refers to “Responsible Business Conduct”.
LCA and RLCA foresee the use of strategic procurement criteria only for framework agreements.

General approach to enhance the implementation of strategic procurement

Having an enabling environment in place is pivotal to ensuring the integration of complementary policy objectives through public procurement. As described in Table 2.3, an enabling environment includes having appropriate regulatory and institutional frameworks, developing policies and strategies, and implementing support tools to ensure the uptake of strategic procurement. (OECD, 2015^[6])

Figure 2.3. Enabling environment to ensure the uptake of strategic procurement



Current Regulatory and strategic framework

The current public procurement regulatory framework includes limited references to the strategic use of public procurement. However, in 2015, Costa Rica issued the National Policy of Sustainable Public Procurement and Creation of the National Steering Committee of Sustainable Procurement- NPSP (Política Nacional de Compras Públicas Sustentables y Creación del Comité Directivo Nacional de Compras Sustentables) (La Presidencia de la República, 2015^[7]). Article 4 of the NPSP stipulates that contracting authorities are required to take into account innovation, SME development, economic, environmental, and social considerations in public procurement processes. Box 2.1 describes the policy considerations laid out in the NPSP.

Box 2.1. Elements considered in the National Policy of Sustainable Public Procurement

The National Policy of Sustainable Public Procurement requires contracting authorities to take into account the following policy objectives:

- Innovation
- Economic considerations:
 - Monetary value, price, availability, quality and functionality of the products, associated with a sustainable perspective
- Environmental considerations:
 - Environmental impact of a product or service throughout its life cycle
- Social considerations:
 - Poverty eradication, equal resource distribution, and human rights
 - Compliance with labour and social laws that protect the workers involved in all stages of the elaboration of products purchased or services contracted by the public administration, considering the related laws on the eradication of child labour, the protection of the workers, promotion of the social equality of women, and equal opportunities for people with disabilities.
- SMEs:

The promotion of SME participation should be taken into account in each of the above considerations.

Source: (La Presidencia de la República, 2015^[7])

The NPSPP requires the Ministry of Finance to develop a strategy for implementing and monitoring this policy in close co-ordination with the ministries in charge of the social, environmental and economic portfolios. Currently, the overall strategy has not been developed, although the annual action plan was prepared and is in force since 2018.

Recommendation:

Costa Rica should consider developing a strategy for implementing and monitoring NPSPP and provide the appropriate resources to the steering committee to ensure proper implementation tools, monitoring and follow-up.

Institutional framework

Setting up a clear institutional framework is a critical element in developing policies and strategies as well as in monitoring their implementation. The current public procurement regulatory framework (LCA and RLCA) does not mention which institution is in charge of these mandates. However, article 99 of the Law of Financial Administration of the Republic and Public Budget assigns this role to DGABCA for environment aspects.

In addition, the NPSPP clearly states that the Ministry of Finance is in charge of leading and co-ordinating necessary actions to implement strategic procurement. However, it also foresees the creation of a Steering Committee of Sustainable Public Procurement as a permanent inter-institutional body. Box 2.2 describes the mandate of this committee.

Box 2.2. Mandates of the Steering Committee of Sustainable Public Procurement

The Steering Committee of Sustainable Public Procurement is mandated to implement the following tasks in order to facilitate the co-ordination and implementation of the National Policy of Sustainable Public Procurement:

- Approval of the strategy and action plan of the National Policy of Sustainable Public Procurement and its modifications
- Ensure the execution and dissemination of the National Policy of Sustainable Public Procurement, as well as its strategy and action plan
- Ensure the continuous monitoring and improvement of the strategy and action plan
- Propose and promote mechanisms to ensure that the National Sustainable Public Procurement Policy remains a priority of the national political agenda.
- Prepare systematic information on the progress of the implementation of the National Policy of Sustainable Public Procurement

Source: (La Presidencia de la República, 2015^[7])

This Committee is comprised of ministers or their representatives from the following ministries: Ministry of Finance, Ministry of Environment and Energy, Ministry of Labour and Social Security, and Ministry of Economy, Industry and Commerce. It is mentioned that DGABCA (Ministry of Finance) acts as the Technical Secretariat of the Steering Committee. Box 2.3 describes DGABGA's mandates as a technical secretariat of the Steering Committee.

Box 2.3. Mandates of the DGABCA as the Technical Secretariat of the Steering Committee

DGABCA is in charge of the following mandates as the Technical Secretariat of the Steering Committee of Sustainable Public Procurement:

- Convene the Steering Committee of Sustainable Public Procurement;
- Provide technical assistance, training and advice on Sustainable Public Procurement to the different actors involved;
- Prepare and co-ordinate the necessary actions for the implementation of the strategy and Action Plan of this Policy;
- Propose to the Steering Committee the modifications of this Policy, its action plan and the tools derived from them;
- Promote co-operation agreements or projects at national/international, with public and private entities to strengthen the implementation of sustainable public procurement;
- Convene, when appropriate, other sectors to provide inputs to the Steering Committee, for the execution of the strategy, action plan or other issues related to sustainable public procurement;
- Convene and create inter-institutional technical groups that are required for the implementation of the NPSSP;

- All actions that ensure an efficient implementation of this Policy and its Action Plan, such as training, technical and legal advice, among others;
- Provide information on the progress of the implementation of the NPSPP.

Source: (La Presidencia de la República, 2015^[7])

Recommendation:

Costa Rica should ensure having in place an appropriate institutional framework to ensure the uptake of strategic procurement.

Future regulatory developments

The DPPL promotes strategic procurement by dedicating a specific chapter to this theme. It also mentions environmental and social sustainability as general principles of the public procurement system (Article 8 of the DPPL). Whilst the DPPL includes most of the provisions of the NPSPP, it does not, however mention any role for the Steering Committee of Sustainable Public Procurement, and does not include provisions regarding the monitoring of the implementation of strategic procurement. To ensure policy coherence, they will need to be included in the DPPL or in the regulation of the law.

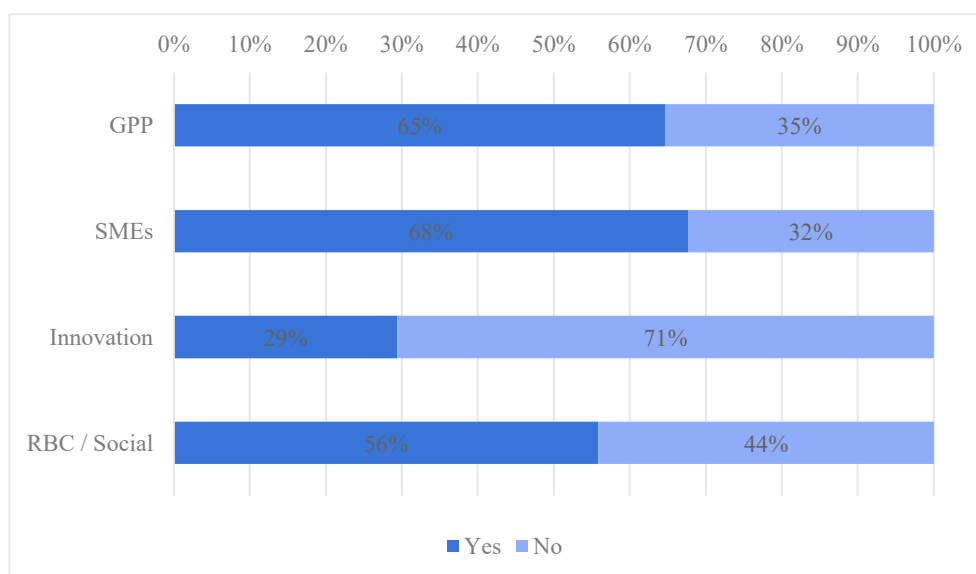
In addition, the DPPL covers all public entities from all levels of government. Therefore ensuring a sound regulatory framework for strategic procurement in the DPPL is pivotal to ensure a strong impact across the whole public sector.

Recommendation:

Costa Rica should ensure policy coherence by aligning provisions of the DPPL or the regulation of the DPPL with the NPSPP.

Current practice within contracting authorities

In addition to analysing the institutional, the strategic and regulatory framework, it is key to understand to what extent contracting authorities are advancing the strategic use of public procurement. The OECD survey shows that 65% of contracting authorities are implementing green public procurement (GPP) 68% of them are using public procurement to support SMEs, 29% of them to foster innovation, and 56% to advance responsible business conduct (RBC) and the social agenda.

Figure 2.4. Share of contracting authorities implementing different policy objectives

Note: 34 contracting authorities provided a valid answer

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey

Within those contracting authorities implementing strategic procurement, the OECD survey asked the share of procurement procedures taking into account each policy objective. Results show that the share of those procurement procedures is relatively limited. For example, 41% of contracting authorities are implementing GPP in only 20% or less of the total number of procedures. Those results are similar when analysing the share of procurement volumes.

Some contracting authorities mentioned that they incorporate some policy dimensions into all public procurement procedures (100%). However, from the comments provided by contracting authorities, it seems that they often refer to mandatory obligations rather than initiatives to enhance the uptake of strategic procurement beyond regulatory measures. For instance, when tender documents mention the provision on the advantage given to SMEs in the case of a tie between two bids, contracting authorities reason that all their procurement procedures consider SME development. The same applies for RBC when requesting the mandatory payment of social security by suppliers.

Furthermore, it is worth mentioning that despite the circular issued by DGABCA in 2019 to request contracting authorities to share a report on strategic procurement, many of them could not provide statistics on strategic procurement. This shows the lack of implementation related to this circular.

Recommendation:

Costa Rica should increase the uptake of strategic procurement and improve the collection of statistics on strategic procurement

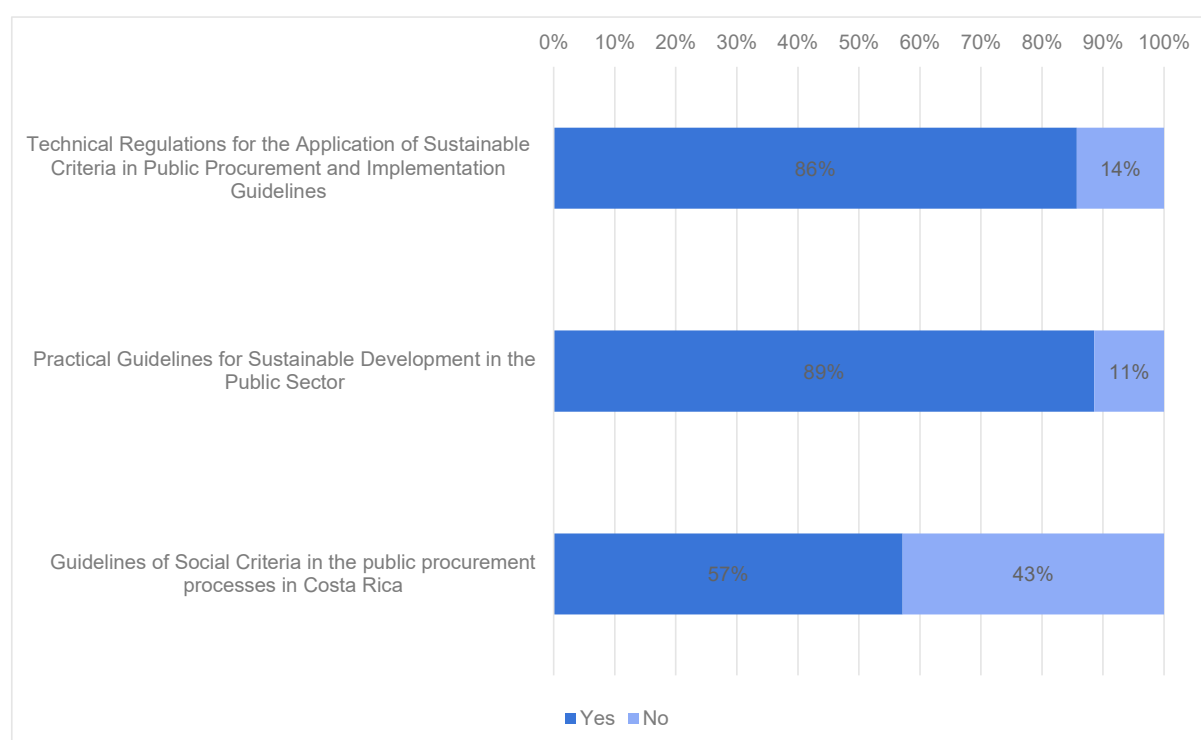
Supporting tools

In addition to the development of a sound regulatory and strategic framework, it is essential to provide procurement officers with supporting tools to ensure the effective implementation of strategic procurement (OECD, 2016^[8]). These tools could be mentioned in the regulatory and strategic framework. They include the development of manuals and guidelines, and providing training courses on all the mechanisms to enhance the uptake of strategic procurement from market analysis to the completion of the contract.

In Costa Rica, DGABCA prepared different tools to support the uptake of strategic procurement. These include i) the Technical Regulation for the Application of Sustainable Criteria in Public Procurement and the Guideline for its Implementation (Normativa Técnica para la Aplicación de Criterios Sustentables en las Compras Públicas y Guía para la Implementación), ii) a Practical Guideline for Sustainable Procurement in the Public Sector (Guía Práctica para la Compra Sustentable en el Sector Público), iii) the Guide on Social Criteria in Public Procurement Processes in Costa Rica (Guía de criterios sociales en los procesos de contratación pública en Costa Rica) and, iv) a Sustainable Criteria Evaluation Matrix (MECS: Matriz de Evaluación de Criterios Sustentables). DGABCA is in the process of introducing the use of the MECS in the e-procurement system SICOP.

However, the OECD survey shows that a significant share of contracting authorities were not aware of the existence of these guidelines, in particular the one on Social Criteria (43% of respondents), as described in Figure 2.5. Contracting authorities highlighted the need to further disseminate these tools and to organise training sessions to present them in order to maximise their impact.

Figure 2.5. Feedback from surveyed contracting authorities on the awareness of the existence of guidelines on strategic procurement in Costa Rica

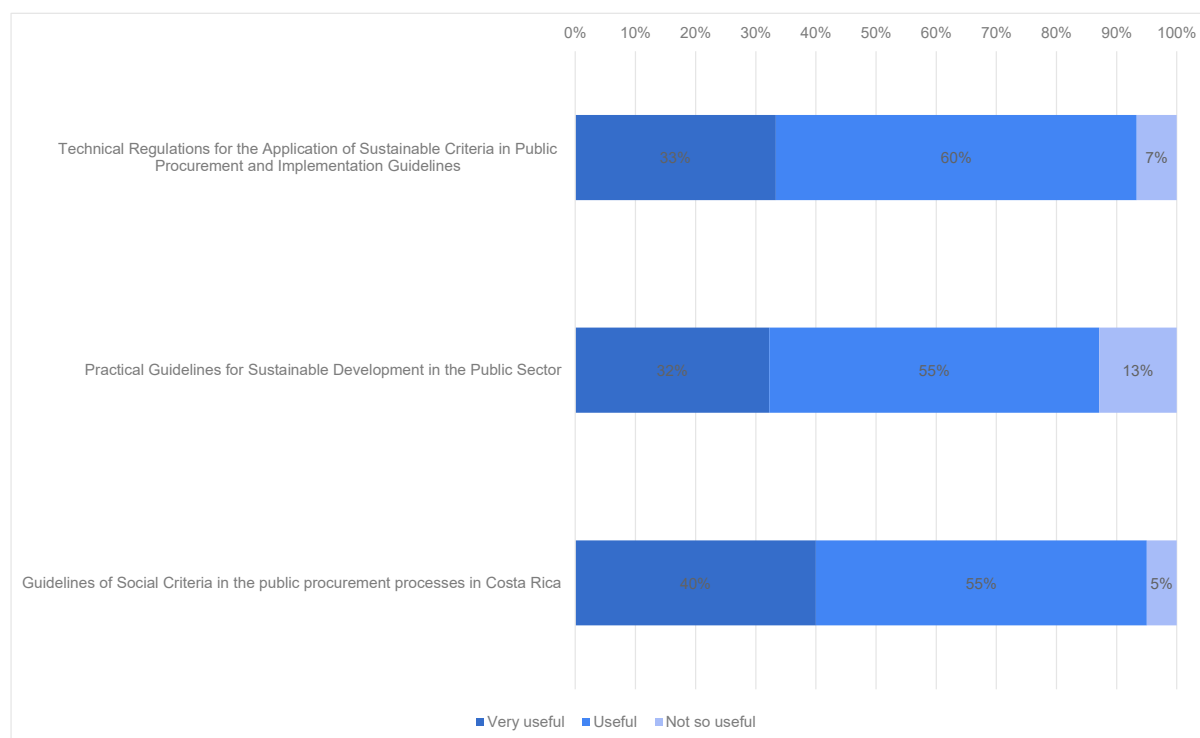


Note: 35 contracting authorities provided a valid answer.

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey

The OECD survey shows that almost all contracting authorities aware of the availability of these guidelines find them “Very useful” or “useful” (93% for the Technical Regulations for the Application of Sustainable Criteria in Public Procurement and Implementation Guidelines, 87% for Practical Guidelines for Sustainable Development in the Public Sector, and 95% for Guidelines of Social Criteria in the Public Procurement Processes in Costa Rica) (see Figure 2.6). However, feedback collected through the survey mentions the need to have more practical and regularly updated guidelines (in particular for GPP) as well as the lack of guidelines on public procurement for innovation.

Figure 2.6. Feedback from surveyed contracting authorities on the usefulness of guidelines on strategic procurement



Note: 35 contracting authorities provided a valid answer. No entities selected the option “Useless”

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey

In terms of training, according to the monitoring report of the 2019 Annual Action Plan of the Steering Committee of Sustainable Public Procurement, the Committee organised 10 capacity-building events on strategic procurement in 2019 where 850 public officials participated from 256 public entities, while no training was provided to the private sector due to budgetary restrictions. DGABCA also uploaded three one-hour videos online in 2016: Introduction to Sustainable Public Procurement, Technical Regulations of Sustainable Public Procurement, and Sustainable Criteria Evaluation Matrix. In addition, DGABCA and the Committee are collaborating with the National Institute of Learning (Instituto Nacional de Aprendizaje) to develop a Sustainable Procurement Module. The help desk operated by the Committee is also available by telephone and email for inquiries from both the public and private sectors regarding sustainable criteria.

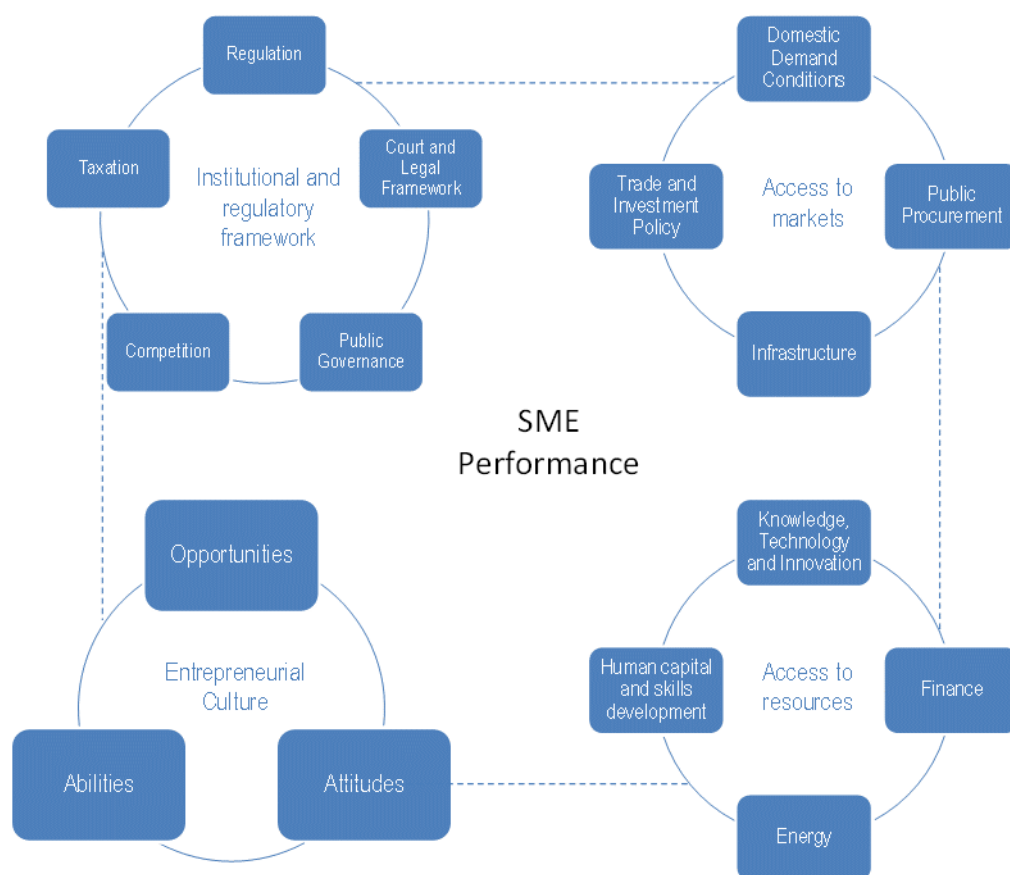
Recommendation:

Costa Rica could take further initiatives to update and disseminate guidelines and provide more capacity-building opportunities to enhance the uptake of strategic procurement.

Further supporting the development of SMEs in Costa Rica

Small and medium-sized enterprises (SMEs) play a vital role in the economy by representing large shares of employment and GDP. In 2017 in Costa Rica, SMEs accounted for 97.47% of all firms, 33.3% of jobs (well below the OECD average of 70%) and 5.89% of exports. (Ministerio de Economía and Comercio, 2019^[9]) Across the OECD countries, SMEs generate 60% of total value-added in the services sector. (OECD, 2017^[10]). Given the volume that public procurement represents in the overall economy, it is a key area for SMEs development (see Figure 2.7).

Figure 2.7. Public procurement, a key policy area for SMEs development



Source: (OECD, 2017^[11])

In Costa Rica, in the recent years, SMEs' contribution to public procurement in terms of value has been relatively low. Indeed, in 2016 contracts awarded to SMEs represented only 26.93% of the total procurement volume (see Table 2.2).

Table 2.2. Procurement values awarded to each category of enterprises in Costa Rica

Category	2012	2013	2014	2015	2016
Micro	8.45%	6.53%	8.19%	10.27%	5.80%
Small	12.86%	9.52%	12.13%	11.25%	8.51%
Medium	16.47%	12.93%	14.02%	17.84%	12.63%
SMEs (Micro + Small + Medium)	37.79%	28.99%	34.33%	39.36%	26.93%
Large	51.45%	59.19%	57.68%	52.26%	54.46%
No category identification	10.76%	11.82%	7.99%	8.38%	18.61%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

Note: No category identification corresponds to the data whose type of enterprises (micro, small, medium, or large) can not be identified due to the data collection issues.

Source: (Ministerio de Economía, Industria y Comercio, 2017^[12])

Unifying the definition of SMEs

Before assessing the impact of any policy on SMEs development, it is key to have a clear and unified definition of SMEs. This definition depends on the socio-economic context of each country. Every country has its own definition of SMEs; some include the number of employees, the turnover and the balance sheet total, or the ownership of the company. (OCDE, 2019^[13])

In Costa Rica, the *Law for Strengthening Small and Medium-sized Enterprises* (Ley de Fortalecimiento de las Pequeñas y Medianas Empresa) and its regulations provide a definition of SMEs that considers specific elements and characteristics of the different economic sectors, and takes as its criteria the number of workers, assets and revenues. However, in practice, different institutions use different criteria to set the categories of economic operators. For instance, the National Bank of Costa Rica categorises companies based on the revenues and the number of employees: micro (5 employees or less, and revenues of CRC 175 000 or less), small (6–30 employees, and revenues of CRC 600 000 or less), and medium (31–100 employees, and CRC 1 500 000 or less). (Ministerio de Economía and Comercio, 2019^[9]). This situation represents a challenge for data collection on SMEs participation in public procurement opportunities.

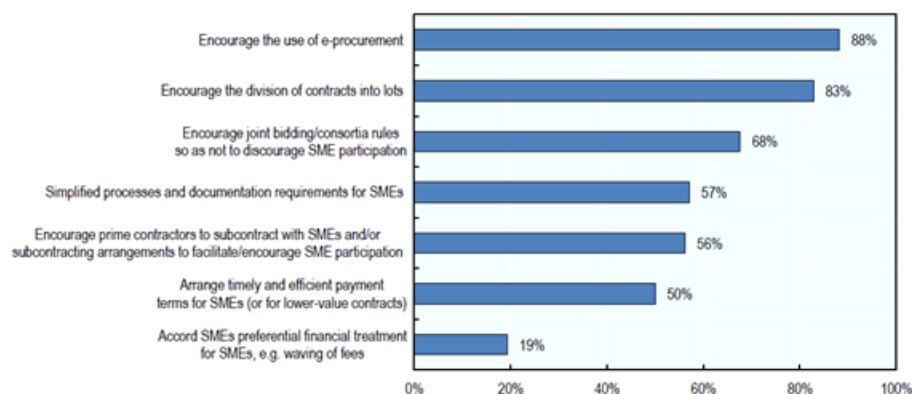
Recommendation:

Costa Rica could benefit from ensuring the use of a unified definition of SMEs to improve the quality of the statistics.

Furthering SMEs participation mechanisms in the public procurement regulatory framework

OECD countries have adopted different approaches and measures to enhance SMEs' participation in public procurement including encouraging the division of contracts into lots, the use of e-procurement and joint bidding (see Figure 2.8).

Figure 2.8. Measures and approaches used to support SMEs in public procurement



Note: Based on responses received from 20 OECD and 5 non-OECD countries

Source: (OECD, 2018^[14])

In Costa Rica, the current public procurement regulatory framework sets out measures to enhance SMEs' access to public procurement including:

- Advance payment ranging between 20 to 40% of the total amount of the contract for SMEs (Article 35 of the RLCA).
- Provision of guarantees issued by a fund established to enhance SME's development: the Special Fund for the Development of Small and Medium-Sized Enterprises (FODEMIPYME) (Article 37 of the LCA and Article 42 of the RLCA).
- In the case of a tie between tenderers, provision of additional points to SMEs (Article 55 bis of the RLCA).
- Promotion of SME's participation in framework agreements through regional lots (Article 115 of the RLCA).

Although not directed specifically to SMEs, the current regulatory framework also lays out some provisions and mechanisms that can enhance their access to public procurement opportunities. These include:

- The possibility of subcontracting up to 50% of the contract (Article 62 of the LCA and Article 69 of the RLCA).
- The possibility to form consortia to bid jointly on a specific procurement opportunity (Articles 38 and 39 of the LCA and Articles 71 and 72 of RLCA).
- The possibility to use price revision clauses when adapted (Article 18 of the LCA and 31 of the RLCA).
- The mandatory use of the e-procurement system (SICOP) (Article 40 of the LCA and Article 148 of the RLCA)
- The mandatory publication by contracting authorities of their annual procurement plan in SICOP the first month of the fiscal year (Article 6 of the LCA and Article 7 of the RLCA)

Furthermore, article 20 of the *Law for Strengthening Small and Medium-sized Enterprises* mentions public procurement as an instrument to enhance SME's development in Costa Rica. (La Asamblea Legislativa de la República de Costa Rica, 2002^[15]). In 2006, a Regulation for the Promotion of SMEs in Public Procurement of Goods and Services (Reglamento Especial para la Promoción de las PYMES en las Compras de Bienes y Servicios de la Administración) was enforced by the Ministry of Economy, Industry and Commerce in order to enhance SME's participation in public procurement through different mechanisms. (La Presidencia de la Republica de Costa Rica, 2006^[16]).

The provisions and mechanisms under the current public procurement regulatory framework (LCA and RLCA) are based on the articles of the Law for Strengthening Small and Medium Enterprises and the Regulation for the Promotion of SMEs in the Public Procurement of Goods and Services. However, the following provisions stated in this Regulation have not been translated into the current legal framework:

- SMEs shall be granted trainings on public procurement (Article 18)
- Each contracting authority should prepare a quarterly report in the e-procurement system that includes the values and number of procedures of public procurement awarded to SMEs (Article 25).

Those provisions are still not reflected in the DPPL, and need to be stipulated in the regulations of the DPPL. Box 2.4 presents the mechanisms foreseen in the DPPL to enhance SME's participation in public procurement.

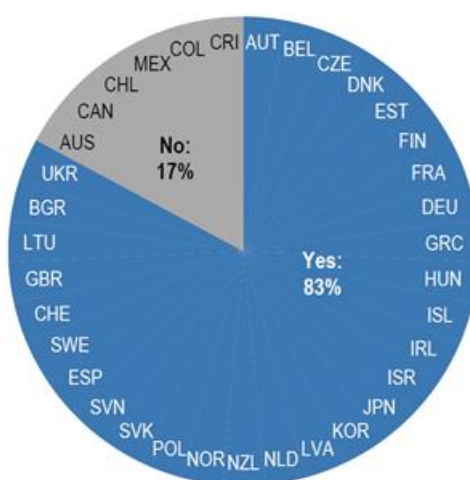
Box 2.4. Mechanism to enhance SME participation in public procurement in the DPPL

- Consortium and participation as subcontractors are permitted (Articles 48 & 49).
- SMEs are allowed to submit bonds issued by the Special Fund for the Development of Small and Medium-Sized Enterprises (Fondo Especial para el Desarrollo de la Micro, Pequeña y Mediana Empresa: FODEMIPYME, funds created to facilitate SME development) or by the financial instruments created under the Law of the Development Banking System (No. 8634, Ley del Sistema de Banca para el Desarrollo). (Article 23)
- Contracting authorities are allowed to apply advanced payment. (Article 11)
- Requiring the performance bonds for SMEs will be optional for the contracts carried out under the threshold of procurement for smaller amount (licitación menor) (Article 44)

Source: DPPL

In terms of international good practice, several countries included allotment strategies in their public procurement legal framework. For instance, under the EU directive 2014/24/EU on public procurement, contracting authorities are required to divide their contracts into lots to facilitate SME's participation in public procurement opportunities. When not dividing contracts, contracting authorities must explain their decision. (European Union, 2014^[17]) Division of contracts into lots is also a major mechanism among OECD countries to facilitate SME participation. Indeed, 83% of countries surveyed, most of which are OECD countries, encourage the division of contracts into lots to facilitate SME participation in public procurement (see Figure 2.9) (OECD, 2018^[14]). Costa Rica did not include any specific provisions in relation to allotment strategies in the current public procurement regulatory framework. However, as mentioned earlier, the current regulatory framework promotes SME's participation in framework agreements through regional lots. This shows the lack of policy coherence in the current public procurement regulatory framework and the DPPL.

Figure 2.9. Countries which encourage allotment strategies for SME participation



Source: (OECD, 2018^[14])

In addition, according to the OECD survey, contracting authorities in Costa Rica are particularly concerned about the capacity of SMEs and start-ups to meet the requirement of years of experiences. This echoes the views of the private sector who mentioned in the OECD survey that contracting authorities often use eligibility requirements (financial and non-financial) that ultimately create a barrier to SME participation in tenders.

Recommendations:

Costa Rica could benefit from ensuring policy coherence between the provisions of the public procurement regulatory framework and other regulatory frameworks on SMEs development such as the submission of a quarterly report and the provision of trainings. This policy coherence could be reflected in the regulation of the DPPL.

Costa Rica could benefit from integrating the division of contracts into lots for all the procurement categories in the public procurement regulatory framework to enhance SMEs participation in public procurement.

Integrating environmental aspects in public procurement

Green Public Procurement (GPP) refers to “purchasing of products and services which are less environmentally damaging when taking into account their whole life cycle” (OECD, 2015^[18]). GPP is an important tool to achieve environmental policy goals relating to climate change, resource use and sustainable consumption and production. By using their purchasing power to choose goods, services and works with a reduced environmental impact, governments can make an important contribution towards sustainability goals.

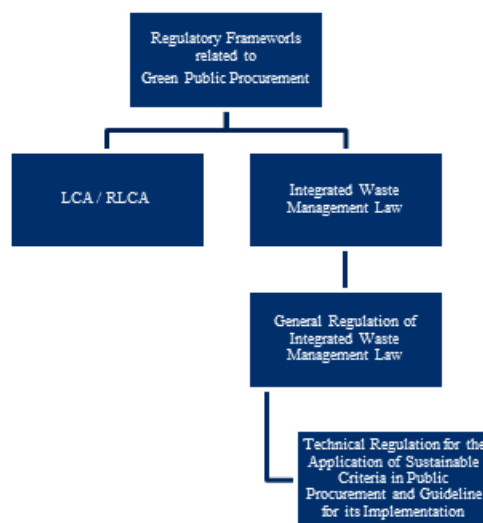
Policies and regulatory frameworks for GPP

All OECD countries have developed policies and regulatory frameworks that include GPP. GPP can be implemented through different mechanisms at different phases of the procurement cycle. Indeed, in the pre-tendering phase, taking into account environmental aspects in market analysis can enable contracting authorities to use the appropriate mechanisms foreseen in the regulatory framework in the tender documentation including:

- Using qualification criteria that allow bidders complying with specific environmental requirements to participate in the tender process
- Using award criteria that encourage bidders to propose higher levels of environmental performance than the minimum requirement specified in the technical specifications
- Applying Life-cycle costing (LCC) in order to evaluate the financial proposals by considering the total costs over the life cycle of a product, service or works including (i) purchase price and all associated costs (delivery, installation, insurance, etc.); (ii) operating costs, including energy, fuel and water use, spares, and maintenance (iii) end-of-life costs, such as decommissioning or disposal; and (iv) costs imputed to environmental externalities
- Using environmental labels for contracting authorities to identify sustainable products or services and/or to use them as means of proof of compliance with the technical specifications
- Using contract performance clauses that require the use of environmentally- friendly materials and a monitoring system

In Costa Rica, the current public procurement regulatory framework (LCA and RLCA) foresees limited provisions in relation to GPP. Indeed, only two provisions mention this topic: Contracting authorities are encouraged to (i) use environmental criteria for framework agreements (Article 115 and 116 of RLCA); and (ii) to carry out environmental impact assessment for public works (Article 59 of LCA and Article 156 of RLCA). However, other regulatory frameworks mention some elements related to GPP (see Figure 2.10).

Figure 2.10. Regulatory frameworks related to GPP



Source: Prepared based upon various laws and regulations

Article 2 of the Integrated Waste Management Law (Ley para la Gestión Integral de Residuos, No.8839) mentions as one of its objectives cleaner production and sustainable consumption by individual consumers and the public sector which implies public procurement. Under Article 29, contracting authorities from both the central and the subnational level can promote the procurement and use of reusable, recyclable, biodegradable and recoverable materials, as well as products manufactured with recycled material. Contracting authorities can also use environmental and life-cycle criteria for the tender evaluation, in accordance with the criteria established in the Regulation of this Law (La Asamblea Legislativa de la República de Costa Rica, 2010^[19]). In article 44 of the General Regulation of this law (Reglamento General a la Ley para la Gestión Integral de Residuos, N° 37567-S-MINAET-H), it is

mentioned that DGABCA is in charge of preparing the technical regulations for contracting authorities to use sustainable criteria.

The DPPL mentions environmental and social sustainability as a general principle of the public procurement system (Article 8 of the DPPL). However, the DPPL could further promote the mandatory use by contracting authorities of GPP mechanisms in their procurement procedures, when possible.

Recommendations:

To guarantee policy coherence, Costa Rica should ensure that the DPPL and its regulation state the mechanisms of GPP set out in other regulatory frameworks related to GPP.

Costa Rica could further promote the mandatory use by contracting authorities of GPP mechanisms in their procurement procedures, when possible.

Implementation tools

In order to ensure the effective implementation of GPP, the entity in charge of the public procurement system and the implementation of strategic procurement should develop implementation tools for public procurement officers and the private sector (OECD, 2016^[8]).

In 2015, DGABCA issued the Technical Regulation for the Application of Sustainable Criteria in Public Procurement and Guideline for its Implementation- TRASCPP (Normativa Técnica para la Aplicación de Criterios Sustentables en las Compras Públicas y Guía para la Implementación) with the support of the European Commission and the United Nations Environment Programme (UNEP) (DGABCA, 2015^[20]). This technical regulation covers GPP as well as other strategic procurement dimensions: SME development, innovation, and social responsibility. It covers all procurement categories and is mandatory for contracting authorities to follow strictly this regulation when procuring procurement categories mentioned in Table 2.3.

Table 2.3. Procurement categories that require following the technical regulation for the application of sustainable criteria in Public Procurement

Goods / Services	
Computer equipment	Vehicles
Office equipment	Catering services
Printing equipment	Clothing (uniforms etc)
Cleaning materials and services	Publications (books etc)
Office supplies	Security systems (security camera etc)

Source: (Dirección General de Administración de Bienes and y Contratación Administrativa, Ministerio de Hacienda, n.d.^[21])

The TRASCPP covers the following criteria: eligibility criteria, evaluation criteria, and contract performance criteria. In order to ensure the effective implementation of this technical regulation, DGABCA developed a practical guideline for sustainable procurement in the public sector (Guía Práctica para la Compra Sustentable en el Sector Público) which gives specific examples for each of the procurement categories.

Recommendation:

Costa Rica could benefit from further developing implementation tools to enhance GPP uptake.

Challenges in implementing green public procurement

The implementation of strategic procurement faces different challenges in OECD countries and around the world. In Costa Rica, based on the OECD survey, contracting authorities identified three main challenges for GPP: i) the lack of capacity and awareness raising of the public procurement workforce to implement strategic procurement, ii) the cost and, iii) the capacity and readiness of the private sector.

As contracting authorities showed concerns related to the cost, it will be key to promote the life-cycle cost (LCC) in procurement operations.

Recommendation:

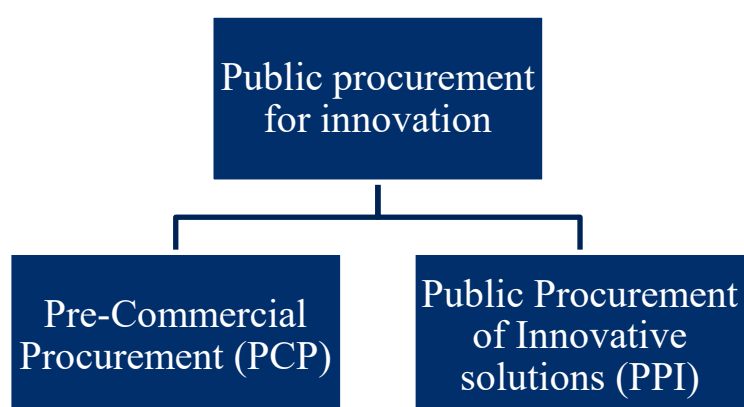
Costa Rica could benefit from promoting the life-cycle cost (LCC) in procurement operations.

Unleashing the potential of public procurement Innovation

Public procurement offers an enormous potential market for innovative products and services. Used strategically, it can help governments boost innovation at both the national and local level and ultimately improve productivity and inclusiveness. Strategic use of public procurement for innovation is defined as “any kind of public procurement practice (pre-commercial or commercial) that is intended to stimulate innovation through research and development and the market uptake of innovative products and services.” In the fields of innovation, governments have traditionally focused on the supply side in order to ensure that the private sector operates in an environment conducive to innovation. In recent years, the role of “demand-side policies” to support innovation has received growing interest from many countries. Therefore, effective policies to support innovation have to focus on both supply and demand conditions. For example, an effective policy can anticipate future investments to address societal challenges; or it may allow potential suppliers to enter the market with new, innovative goods or services, thus encouraging innovative solutions to pressing challenges. (OECD, 2017^[22])

In 2018, about 70% of OECD countries had developed policies or strategies related to public procurement for innovation (OECD, 2019^[23]). There are two typical schemes of public procurement for innovation: pre-commercial procurement (PCP) and public procurement of innovative solutions (see Figure 2.11).

Figure 2.11. Public procurement for innovation



PCP refers to procurement of research and development (R&D) services based on identified needs of the public administration. In contrast, PPI is a process where the public sector acts as ‘launch customer’ of an innovative product or service, which is commercially available on the market, but not on a large scale. PCP and PPI are considered complementary since PCP focuses on the R&D prior to commercialisation, while

PPI is concerned with commercial diffusion post R&D phase (European Commission, n.d.^[24]). Under the PCP approach, public procurers organise different tendering stages where alternative solutions from different providers are evaluated. The solutions are evaluated at critical milestones such as design, prototyping and testing to select one provider at the end of the process. The system is designed to incentivise economic operators in participating. The PPI process is about the procurement of an innovative solution that has demonstrated prior success on a small scale, but is not yet available on the market for large-scale purchase (European Commission, n.d.^[24]).

In Costa Rica, the current public procurement regulatory framework does not mention the strategic use of public procurement for innovation. However, the NPSPP recognises public procurement as a strategic tool to promote innovation. The Technical Regulation for the Application of Sustainable Criteria in Public Procurement (TRASCPP) briefly explains how to consider innovation in the public procurement cycle. For example, contracts can include flexible clauses that incentivise the contractor to suggest improvements to the technical specifications, which could enable them in turn to propose innovative solutions. However, there is no definition of public procurement for innovation in this policy and no tools have been developed to implement this policy.

The DPPL introduces the concept of “public procurement for innovation”. Indeed, article 22 stipulates that innovative criteria must meet functionality and performance criteria and that contracting authorities must define their needs in advance as well as the expected results from innovative solutions. The DPPL also includes the possibility to undertake a PCP. Indeed, projects of research and/or technological innovation can be implemented through a partnership between the public and the private sector. This could be through the development of prototypes for research, experiments and studies or when contracting authorities receive a proposal accredited as “innovative”. However, the DPPL does not clarify the procedures contracting authorities should take to implement public procurement for innovation; In addition, it does not provide information on the accreditation of innovative solutions and does not mention clearly the possibility to procure innovative solutions (PPI). Those provisions could be further detailed and clarified in the regulation of the law.

In addition, according to the OECD survey, contracting authorities mentioned the lack of adequate policies, guidelines, culture, and capacity-building opportunities on public procurement for innovation. The private sector highlighted that tenders are not developed in a way so as to encourage innovation.

Recommendations:

Costa Rica could benefit from defining the concept of innovation and clarify the accreditation process for “innovative solutions” in its regulatory framework, in particular in the regulation of the law.

Costa Rica could benefit from mentioning in its regulatory framework the possibility to undertake a PPI.

Costa Rica could benefit from integrating specific procedures to implement public procurement for innovation as well as developing implementation tools to ensure the effective uptake of this policy into its regulatory framework.

Enhancing the integration of responsible business conduct considerations in public procurement

Governments are expecting businesses to have high standards of conduct in different areas including human rights, labour rights, environmental and social aspects, and integrity. Those are referred to as responsible business conduct- RBC considerations. RBC means that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address negative consequences of their operations, while contributing to sustainable development of the countries in which they operate. It also means integrating all the RBC considerations within core business activities, including throughout the supply chain and in business relationships. (OECD, 2018^[1])

As public procurement represents 12% of GDP in OECD countries, it could be used as a lever to increase the uptake of RBC considerations for businesses who are contracting with governments and public entities at all levels of government. The integration of RBC considerations into public procurement policies and practices can also be referred to as sustainable and socially responsible public procurement, including within the supply chain. Table 2.4 provides a list and a definition of RBC considerations that can be implemented through public procurement. Given that environmental considerations were discussed in section 0, this section will focus on human and labour rights and social considerations.

Table 2.4. Responsible Business Conduct Considerations

Consideration	Definition
Environmental considerations	Any activity to maintain or restore the quality of the environment through preventing the emission of pollutants or reducing the presence of polluting substances in environmental media. Within Public Procurement, environmental considerations can include pollution, carbon footprint, water footprint/use, biodiversity, micro-plastics, climate change, deforestation, chemicals, waste reduction (water, packaging), fossil fuels, land use/tenure, energy/renewable energy, circular economy.
Human rights	As expressed in the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights)
Labour rights	Fundamental principles and rights at work: freedom of association and collective bargaining, child labour, forced labour and non-discrimination (ILO fundamental Conventions), and other labour rights (decent wages, occupational safety and health, social security)
Social considerations:	
-Minority considerations	certain categories of the society that need to be integrated in the economy through specific policies (United Nations)
-People with disabilities	those who have a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities (United Nations)
-Long-term unemployed people	people who have been unemployed for 12 months or more (OECD)
-Gender considerations	incorporating of gender elements in the whole policy decision making cycle and in procurement processes (OECD)

Source: (OECD, n.d.[25])

Policies and regulatory frameworks

In Costa Rica, the current public procurement regulatory framework foresees limited provisions in relation to RBC considerations. It includes provisions to encourage social consideration in framework agreements (Article 115 and 116 of RLCA); and the mandatory payment by suppliers of social security for their employees to the Costa Rican Social Security Institution (Article 65 of RLCA).

However, the NPSPP mentions that contracting authorities have to take into account different RBC considerations in their procurement processes including human rights, labour rights, the eradication of child labour, gender mainstreaming and people with disabilities in line with national policies and laws. It is key to highlight that this policy mentions that these considerations should cascade down through the supply chain, resulting in good practice. The Technical Regulation for the Application of Sustainable Criteria in Public Procurement also covers RBC considerations. However, in practice, the implementation of these policies is limited.

In line with this technical regulation, the DPPL mentions RBC considerations in Article 20. Tender documents can include clauses related to social integration of people with disabilities and vulnerable groups, gender mainstreaming or the improvement of workers conditions. Those requirements can be applicable to any stage of the life cycle of goods, services or public works, which means that they can be

required throughout the supply chain. While it is good practice that the DPPL covers all these requirements, it is not mandatory for contracting authorities to implement them.

Recommendation:

Costa Rica could consider mandating contracting authorities to implement RBC criteria in their public procurement opportunities to support its uptake, as part of the broader work on sustainability.

Implementation tools

To support the implementation of the NPSP, DGABCA and the Ministry of Labour and Social Security prepared the “Social Criteria Guide in Public Procurement Processes in Costa Rica” (Guía de criterios sociales en los procesos de contratación pública en Costa Rica). This guide includes examples of clauses to be used in tender documentation. It also explains the following obligations of bidders related to social security, labour security insurance, and labour conditions:

- Social security: Suppliers must ensure that their employees are covered by the social security system of the Costa Rican Social Security Institution (Caja Costarricense de Seguro Social, CCSS).
- Labour security insurance: Suppliers must provide their workers with labour insurance.
- Labour conditions : Suppliers have to guarantee (i) health and safety measures at the workplace, (ii) minimum wage, (iii) maximum legal working hours, (iv) no child labour (under 15 years old), (v) no discrimination (ethnicity, age, gender, religion, people with disabilities, people with AIDS; (vi) training opportunities, and (vii) no-employment of illegal migrants.

These obligations are set as eligibility requirements for bidders participating in public procurement opportunities. Any violations of these obligations will lead to financial penalties or to the termination of the contracts. In addition, promoting employment opportunities can be incorporated as an evaluation criteria (maximum of 20%): young people (minimum of 16 years old), ethnic minority, people with lower educational academic backgrounds, people with disabilities, etc.

As mentioned earlier, the NSPP foresees the possibility to implement RBC considerations throughout the supply chain. While this guide supports the implementation of RBC considerations, it does not mention the supply chain.

Recommendation:

Costa Rica could benefit from providing contracting authorities with further tools and guidance to enable them to require RBC criteria throughout the supply chain.

Challenges in implementing RBC in public procurement

The OECD survey shows that the lack of capacity and awareness raising of the public procurement workforce is the main challenge to enhancing RBC and social policies in public procurement procedures. Contracting authorities also highlighted the need to enhance the legal framework, policies, and practices to promote RBC and social policies throughout the public procurement cycle, including during the contract execution by implementing monitoring mechanisms. The private sector also mentioned in the OECD survey the lack of incentives to promote RBC in public procurement processes.

Recommendation:

Costa Rica should consider further promote the strategic use of procurement for RBC in its regulatory framework.

Monitoring of strategic procurement implementation

The strategic use of public procurement should be evaluated to provide policy makers and users information on the impact of the policies achieved. Therefore, the OECD Recommendation calls upon the countries to employ appropriate impact assessment methodology to measure the effectiveness of strategic procurement (OECD, 2015^[6]). This is a key step not only to assess the implementation of these policies but also gather evidence for making better strategies and policies (OECD, 2019^[26]). It is therefore pivotal to align the monitoring system with the regulatory and strategic framework.

In Costa Rica, in order to ensure an effective monitoring of the implementation of the TRASCPP, contracting authorities are required to submit a report to DGABCA which includes the following indicators:

- Technical specification of products that have been requested with sustainable criteria.
- The share of procurement procedures with sustainable criteria
- The number of bidders that have met the sustainable criteria, and the percentage they represent within all bidders
- The procurement volume of contracts with sustainable criteria

As already discussed in section 0, some contracting authorities do not have data on their implementation of strategic procurement. The information requested by DGABCA might be submitted incomplete, impeding a sound evaluation of the strategic procurement uptake (i.e. information such as the procurement category of each tender, the procurement procedure, if it is a framework agreement or not, etc).

Furthermore, not all the information required for monitoring is available on the e-procurement system-SICOP, and each contracting authority has to compile data for all procurement opportunities. Therefore, this task could represent a burden for contracting authorities and limits the uptake of strategic procurement. This assumption is confirmed by the fact that in 2019 DGABCA issued a circular to request contracting authorities to send their reports on strategic procurement. (Dirección General de Administración de Bienes and y Contratación Administrativa, Ministerio de Hacienda, 2019^[27]).

The information on sustainable criteria is available in SICOP for framework agreements implemented by DGABCA. In order to facilitate the data collection, DGABCA is planning to include in SICOP a compulsory field on sustainable criteria to be filled by all contracting authorities.

Under the DPPL, DCP is entitled to request information from contracting authorities for the execution of their mandate. DCP is also mandated to establish comparative performance indicators of public procurement. The evaluation should be carried out at least once a year in order to identify the challenges in public procurement system, as well as to prepare statistics for effective accountability and informed decision-making. However, it is not clear whether this mandate will be applied to strategic procurement.

Recommendations:

Costa Rica should consider strengthening the information collection system on strategic procurement.

Comparative performance indicators evaluated by the DCP should include data and indicators on strategic public procurement.

Costa Rica could benefit from requiring information in SICOP on each policy objective to ease the monitoring of strategic procurement.

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3 Professionalisation of the public procurement workforce

Introduction

A public procurement system with actors having an adequate capacity is a key element for its sound functioning as well as for the success of any reforms in this area. Indeed, public procurement accounts for a significant share of public spending: around 12% of GDP in OECD member countries and 12.5% of GDP in Costa Rica in 2018. Effective management of public procurement depends largely on the capacity of the various actors and stakeholders in terms of numbers and skills but also on the adequacy of their professional requirements within an efficient public procurement system.

The OECD Recommendation dedicates a principle to the capacity of the public procurement workforce and calls upon countries to develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively. To do so, countries should: i) Ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools; ii) Provide an attractive, competitive and merit-based career options for procurement officials and; (iii) Promote collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competences of the procurement workforce (OECD, 2015^[1]). The OECD's experience shows that having officials with the adequate skills is a key pillar of an effective public procurement system because of its impact on other principles of the OECD Recommendation on public procurement (see Box 3.1).

Box 3.1. Main linkages between capacity and other principles of the Recommendation

Capacity can also be strengthened by addressing other closely-linked principles of the Recommendation:

- **Integrity:** More capable procurement officers are better able to comply with procedures and ensure that they are applied fairly and effectively to avoid corruption.
- **Access:** A trained public procurement workforce can ensure the delivery of clear and integrated tender documentation, standardised where possible.
- **Balance:** An adequate capacity of the procurement workforce can support complementary policy objectives.
- **Efficiency:** A procurement workforce with adequate capacity ensures an efficient and effective delivery of value for money.
- **E-procurement:** The public procurement workforce and potential bidders/suppliers need to know how to use e-procurement systems and tools.
- **Evaluation:** Designating specific evaluation units or teams to analyse public procurement information and monitor performance in the public procurement system boosts capacity.
- **Risk management:** Risk management strategies, related implementation plans and measures set up to deal with the identified risks need to be known and understood among the procurement workforce in order to be used.
- **Accountability:** Internal control and external controls need to be co-ordinated, sufficiently resourced and integrated to be effective.

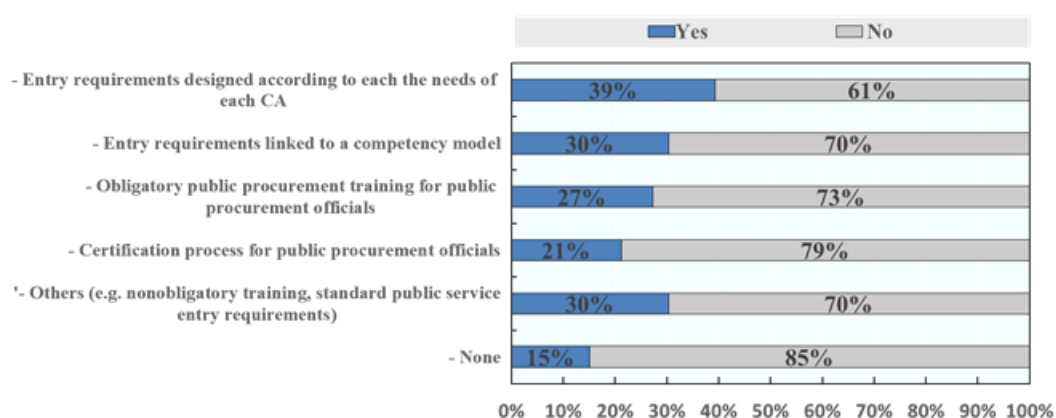
Source: (OECD, 2016^[2])

Aware of the key role of capacity in the public procurement system, many countries are investing in strengthening those capacities through different approaches including:

- Competency model
- Certification framework
- Provision of training (mandatory or optional)
- Methodological assistance (help-desk, manuals, guidelines)
- Other mechanisms

Figure 3.1 shows the main measures the OECD countries have taken to enhance the capacity of the public procurement workforce.

Figure 3.1. Measures in the OECD countries to ensure adequate capacity of the public procurement workforce



Note: "None" means no specific measure to ensure capacity of the procurement workforce. Data for 33 respondent countries (30 OECD countries plus Morocco, Costa Rica and Peru).

Source: (OECD, 2019^[3])

Table 3.1 summarises the current efforts of the professionalisation and capacity building of the public procurement workforce in Costa Rica.

Table 3.1. Current situation on the professionalisation of the procurement workforce in Costa Rica

Issue	Available	Not available	Not clear	Note
Assessment of the capacity of the public procurement workforce in the past		x		
Strategy for the capacity of the public procurement workforce		x		DPPL foresees it.
Competency model (job profile) of the public procurement workforce		x		
Certification framework for the public procurement workforce		x		DPPL foresees it.
Training for public procurement officers	x			DPPL foresees it.
Training for suppliers			x	
Practical training system (OJT, job swap, internship etc)	x			At some contracting authorities
Help desk		x		Only for SICOP and sustainable criteria
Manual / guideline	x			Guidelines for strategic procurement
Standardised documents / templates	x			Each CAs prepare their own documents - templates
Incentive System		x		
Career path / promotion		x		
Collaboration with knowledge centre (universities etc)	x			DPPL foresees it. Availability of master programs
Community of practice		x		DPPL foresees it.
One-stop shop procurement portal		x		

Source: Prepared mainly based upon the responses from Costa Rica to the OECD 2018 Public procurement Survey

This chapter analyses the professionalisation and capacity-building system of the public procurement workforce in Costa Rica with a focus on the legal framework, policies and strategies in this area to provide the country with recommendations.

Towards a strategy for the professionalisation of the public procurement workforce

Setting up an enabling legal framework and a tailored strategy are key steps when countries intend to advance the professionalisation of the public procurement workforce. In some countries, the regulatory framework includes provisions highlighting a capable public procurement workforce. For instance, in New Zealand, the public procurement rules emphasise the need to “set up a team with the right mix of skills and experience”. (New Zealand Government Procurement and Property, n.d.^[4])

Given its strong impact on the public procurement system, some countries developed a tailored national strategy to enhance the capacity of the procurement workforce. The development of this strategy contributes to adapting the objectives to the context of the country, prioritising them, planning them, measuring the progress on their implementation and evaluating the results. This requires a methodological approach based on four main steps: i) analysis of the current situation; ii) the development of a strategy; iii) preparation for its effective implementation; and (iv) re-examination of the situation.

In Costa Rica, there is no specific strategy to enhance the capacity of the public procurement workforce. The current regulatory framework of public procurement (Law on Public Procurement- LCA, and its Regulation-RLCA) foresees the following principles: efficiency, effectiveness, equal treatment, open competition and publicity. The implementation of these principles requires an adequate capacity of the

procurement workforce. However, the regulatory framework does not include a direct reference to the capacity of the public procurement workforce.

Aware of the key role of workforce capacity in a well-functioning public procurement system, Costa Rica introduced a dedicated chapter in the draft public procurement law (DPPL) on the professionalisation and capacity-building of the public procurement workforce. This chapter defines the institutional framework of the professionalisation and capacity-building of the public procurement workforce. Article 134 mentions that the Public Procurement Authority (ACP) is in charge of defining the professionalisation and capacity building strategy of the public procurement workforce. This strategy should be developed within 14 months after the entry into force of the DPPL. The Directorate of Public Procurement (DCP) within the Ministry of Finance, as the implementing agency for the ACP, will be in charge of rolling out the strategy (see Box 3.2).

Box 3.2. Professionalisation of the public procurement workforce in the DPPL

The Directorate of Public Procurement of the Ministry of Finance, as the implementing agency for the ACP, will be in charge of:

- Facilitating the exchange of good practices among procurement officials
- Providing support to the public procurement workforce
- Establishing partnerships with different stakeholders including universities, knowledge centre, and international organizations.

It also states that public procurement officials should be eligible for regular training in order to be able to undertake their tasks.

Source: Articles 133 and 134 of the DPPL

Recommendation:

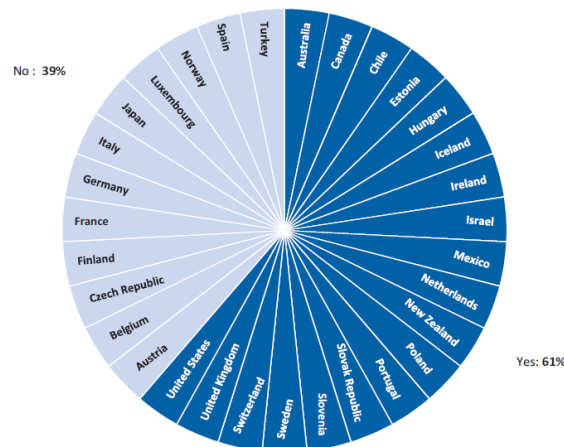
Costa Rica should ensure the development and implementation of a strategy on the professionalisation of the public procurement workforce.

Identification of the public procurement workforce and their characteristics

The professionalisation of the public procurement workforce supports the efficiency of the entire public procurement system. The public procurement workforce includes all officials involved in public procurement activities: tender preparation, contract management and the conclusion of the contract.

In addition to public procurement officials, other stakeholders play a key role in the procurement system and might need to enhance their capacity in this area, such as control bodies (internal control and external control) and economic operators. The OECD recommends that countries have sufficient staff in terms of numbers and skills for effective- functioning of the public procurement system. This implies the identification of the public procurement workforce and their characteristics including their background and years of professional experience. One key element that facilitates this task is the recognition of public procurement as a professional task. Indeed, as described in Figure 3.2, in 2013, 61% of the OECD countries recognised public procurement as a professional function. Since then, this number has increased with other countries such as France and Spain also recognising it.

Figure 3.2. Recognition of public procurement as a specific profession



Note: Data is unavailable for Greece. Procurement officials are recognised as a specific profession if this profession was recognised through a certification or licensing programme in place, through well-defined curricula (e.g. formal job description/role) and/or through integrity guidelines (e.g. codes of conduct specifically for procurement officials).

Source: (OECD, 2013^[5])

The OECD survey shows that 7 496 officials in 34 contracting authorities are involved in public procurement activities and 21% of them work exclusively on public procurement.

In Costa Rica, no data is available on the number and characteristics of officials in charge of public procurement or involved in public procurement processes. This is in part because public procurement is not recognised as a professional task in the country and also no assessment of the capacity of the public procurement workforce has been carried out.

In addition, the OECD experience shows that the turnover of public procurement officials is one of the issues faced by contracting authorities that has a negative impact on the ability of the system to function well. The OECD survey shows that the turnover rate of the public procurement workforce within 33 contracting authorities was 2.53% in 2019 with large differences within contracting authorities. Feedback from the survey mentioned that the turnover rate could be high because the tasks performed by the public procurement workforce are still administrative; officials could work in other positions that require the same academic requirements but with better conditions.

Indeed, in the absence of a career path, these agents move to other professions in the public service or in the private sector. In order to limit turnover, measures such as the development of career paths must be implemented to take into account the complexity of the public procurement profession and the risks they are subject to.

Recommendations:

Costa Rica should consider identifying the public procurement workforce and their characteristics to ensure the dissemination of future strategies and capacity building activities.

Costa Rica should consider taking measures to recognise public procurement as a professional task and developing a career path for public procurement officials.

Costa Rica should analyse the turnover among public procurement officials.

Developing a competency framework and a certification program

Public procurement is a multidisciplinary area that requires specific skills and competencies. Procurement professionals have to cover the professional, technical, but also personal aspects of the workplace (teamwork, communication, management and project management skills, etc.). These skills and competencies have to be clearly defined to support the functioning of the public procurement system. Therefore, some OECD countries such as the United Kingdom have developed a competency framework for public procurement officials (Government Commercial Function, 2015^[6]). This framework can also be used at different stages of the human resource management process: recruitment, promotion, training and evaluation of performances.

A certification framework tailored to relevant skills is another tool used in the professionalisation of the procurement workforce. It enables the provision of regular and targeted trainings to the procurement workforce with different levels to achieve. It is closely linked to competency frameworks that map critical skills needed to support the strategic goals of public entities. These professionalisation tools are being gradually implemented by OECD countries. In 2018, for public procurement professionals, 21% of OECD countries developed a certification framework and 30% of them a competency framework.

In Costa Rica, competency or certification frameworks have not been put in place. However, DGABCA is currently in the process of developing a certification program in order to improve the capacity of public procurement officials. Aware of the need to move forward with the certification program, the DPPL clearly assigns the role of developing a strategy to the ACP and its implementation therefore to the DCP. DPPL does not mention the development of a competency framework.

Recommendations:

Costa Rica should ensure the implementation of the certification framework.

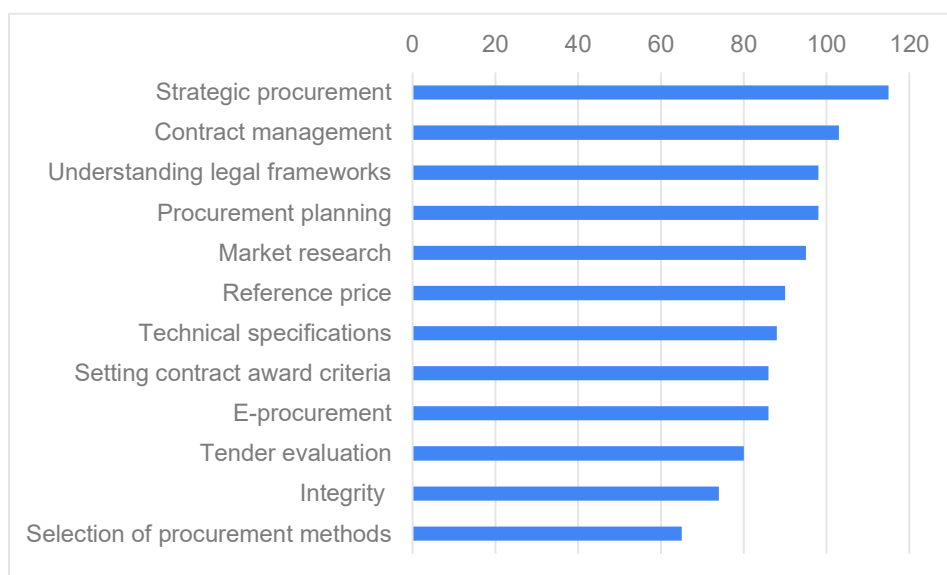
Costa Rica should consider the possibility of developing a competency framework for public procurement officials.

Strengthening the public procurement capacity building framework

An efficient public procurement system requires a procurement workforce with the necessary multidisciplinary skills and competencies. In practice, the procurement workforce faces different challenges in performing their tasks and some of which could be overcome through capacity building activities. In Costa Rica, the OECD survey shows that the procurement force faces the following challenges: i) the implementation of strategic procurement (115 points), ii) contract management (103 points), iii) understanding the legal frameworks (95 points), iv) the procurement planning (98 points), and (v) market research (95 points) (see Figure 3.3).

Figure 3.3. Challenges faced by the procurement workforce

Strategic procurement has been identified as the major challenge for the capability of public procurement officials



Note: 35 contracting authorities provided a valid answer. Each contracting authority was requested to rate each of procurement topics in terms of challenges in strengthening capacity. Then, the result was summed up after the conversion in accordance with the following scoring rule: 1st challenge (greatest challenge) = 4 points, 2nd challenge = 3 points, 3rd challenge = 2 points, 4th challenge (least challenging topic) = 1 points
Source: Prepared in accordance with the responses to the questionnaires of the OECD survey

Enhancing the capacity of the public procurement workforce requires having an adequate training system. A pivotal step is the decision on the institutional framework for capacity building. This requires assigning the responsibility to provide trainings to specific institutions either from the public or the private sector. For example, in Lithuania the Public Procurement Office provides training, while in Croatia the private sector plays a key role in this area (OECD, 2019^[7]).

Furthermore, countries need to identify a portfolio of training sessions tailored to each function of public procurement officers. Based on the OECD's experience, in many countries public procurement training focuses more on the legal framework than strategic topics. Therefore, it is highly critical for the development of the training portfolio to balance theory and practice.

Currently, no institution is in charge of capacity building policies and activities in Costa Rica in the area of public procurement. No organised training sessions are available to procurement officials.

Under the current situation, each contracting authority is required to take responsibility for reinforcing the capacity of its own public procurement workforce. The OECD survey shows that the majority of the public procurement officials within contracting authorities participated in training in the past three years (2017-2019). In terms of training topics, 76% of contracting authorities stated that they were solely on the legal framework. Some contracting authorities showed their concern regarding the cost of training given the current budget restrictions. They highlighted that the government does not provide free training, excluding the virtual ones provided by the CGR, on control. For the private sector, the surveyed business organisations mentioned that they provided training to their members on the public procurement legal framework and the use of SICOP.

Despite the lack of organised capacity building activities, the survey showed that some contracting authorities have been taking initiatives to reinforce the capacity of their public procurement officials, such as:

- Organising meetings to share knowledge (for example, semi-annual workshops on lessons learnt to facilitate feedback and continuous improvement of processes)
- Co-ordination with the Ministry of Finance / Ministry of Public Works and Transport and/or experts of other contracting authorities to provide training
- Internship in other contracting authorities

As already discussed in the Chapter 1, the DPPL mentions that ACP is responsible for preparing the policy on capacity building for the public procurement workforce, and that the DCP is in charge of implementing this policy.

Strengthening the capacity of the procurement workforce, however, goes beyond providing trainings. As highlighted in the OECD recommendation on public procurement, countries need to take steps to enhance the collaboration with knowledge centres such as universities. Article 134 of DPPL makes provision for collaboration with knowledge centres. In Costa Rica, some universities offer a master's program or technical programs related to public procurement (see Box 3.3). However, it seems that there was no collaboration with the government in developing those programs.

Box 3.3. Degree programs of public procurement in Costa Rica

Central American Institute of Public Administration

The Central American Institute of Public Administration (El Instituto Centroamericano de Administración Pública, ICAP) offers a Master's in Public Procurement Administration. This master program consists of defending a thesis and completing 20 modules covering different topics of procurement including the regulatory framework, integrity, e-procurement, sustainable procurement, contract management, public finance, conflict resolution.

This Master's is 20 months and students are required to participate in a 4-hour class twice weekly.

The Costa Rica Institute of Technology

The Costa Rica Institute of Technology (Tecnológico de Costa Rica, TEC) offers a Program for Specialist in Public Procurement (El programa de Especialista en Contratación Administrativa). This program consists of the following six modules:

- Module I: Legal framework of public procurement
- Module II: Start and selection of procurement procedures
- Module III: Development and completion of procurement procedures
- Module IV: Financial aspects of public procurement
- Module V: Contract management
- Module VI: Judicial control of public procurement

This program has a duration of 6 months. Each module is taught during 4 weeks (16 hours).

University of Costa Rica

The Center for Research and Training in Public Administration at the University of Costa Rica (Centro de Investigación y Capacitación en Administración Pública, CICAP) offered a Technical Program in

Public Procurement for Public Administration (Programa Técnico en Contratación Administrativa para la Gestión Pública) in 2017.

The program lasts 9 months with a 144-hour curriculum.

Source: (ICAP (Instituto Centroamericano de Administración Pública), n.d.^[8]), (El Tecnológico de Costa Rica (TEC), 2019^[9]), (Universidad de Costa Rica, 2017^[10])

Recommendations:

Costa Rica could develop capacity-building activities based on the challenges identified by the procurement workforce. These activities should be part of a training plan, prioritised according to their importance and available resources, and aligned with the professionalisation strategy that will be developed by the ACP.

In Costa Rica, the government should consider the possibility of providing training for both the public and private sector.

Costa Rica could benefit from seeking more collaboration with universities to reinforce the capacity of the public procurement workforce.

Developing the methodological support on public procurement

Methodological assistance represents a key pillar for the strengthening of a capacity-building framework of the public procurement workforce. It is a useful tool to support public procurement officials to fulfil their missions effectively. In this regard, countries have developed many tools to facilitate this, including manuals & guidelines, standardised templates, and a help desk. For example, the Public Procurement Office of Lithuania issued manuals and guidelines for various procurement topics such as market analysis and contract award criteria. Spain provides standardised documents to simplify the procurement process. France operates a call centre and e-mail inbox (CIJAP) to deal with inquiries about public procurement from contracting authorities. (OECD, 2019^[7])

In Costa Rica, DGABCA issued different circulars including those related to the evaluation criteria methodology for strategic procurement, minimum information to upload in SICOP, and preventive measures to fight against collusion in public procurement. It also published a Practical Guideline for Sustainable Procurement in the Public Sector. However, those tools could be expanded to many other areas where users feel there is a need for further methodological support.

According to the OECD survey, contracting authorities developed their own methodological tools: standardised documents such as tender documents (73% of contracting authorities), manuals/guidelines (67% of contracting authorities), and checklists, such as the checklist for tender evaluation (64% of contracting authorities).

In addition, except the helpdesk on SICOP and sustainable criteria, there is no global helpdesk in place in Costa Rica to support practitioners from both the public and the private sector in case they have question in relation to legal and/or technical aspects of public procurement.

The DPPL mentions that the DCP is in charge of developing standardised tender documents and contract documents as well as the format to facilitate contract Management. The DPPL also covers all public entities from all levels of government that are partially or totally utilising public funds for their public procurement activities. This might have a clear impact on the provision of more methodological support to practitioners.

Recommendation:

Costa Rica should reinforce its methodological assistance system by enriching the coverage and quality of the guidelines, manuals, and standardised templates as well as setting up a global help desk.

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4 Civil society participation in public procurement

Introduction

Public procurement involves the use of public funds which come from taxpayer's money. Therefore, well-governed public procurement can, and must, play a major role in fostering public sector efficiency and establishing citizens' trust. In the recent years, civil society participation in the public procurement system has been a critical element in enhancing efficiency, transparency, integrity, and accountability. The 2015 "OECD Recommendation of the Council on Public Procurement" calls upon countries to foster transparent and effective stakeholder participation including civil society participation. (OECD, 2015^[1]). Civil society participation in the public procurement system can include different actors: i) individual participation of citizens; or ii) civil society organisations representing different stakeholders of the public procurement system including non-governmental organisations –NGOs, business representatives, trade unions, etc. The roles that different citizens and civil society organisations (CSOs) adopt will vary considerably depending on their respective motivations, approach, and capacity, as well as the context in which they operate (OECD, 2017^[2]).

There are different mechanisms to promote civil society participation in public procurement. These mechanisms can be implemented at two different levels: within the public procurement system and at individual procurement project level (See Box 4.1). These mechanisms are in line with the Open Government initiatives that aim to create a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth. (OECD, 2017^[2])

Box 4.1. Mechanisms of civil society participation in the public procurement

Participation in the public procurement system

- Consultations for reforming the public procurement system:

Governments invite stakeholders including civil society to public consultation processes for reforming the public procurement system and during the policy cycle. Civil society can then express its views and concerns.

- Oversight of public procurement spending

Governments can allow stakeholders including civil society to analyse public procurement decisions and spending. Timely access to relevant information is indispensable to enhance the oversight of public procurement by civil society.

- Consultations on citizen's needs / procurement plans

Governments invite stakeholders including civil society to define their needs and priorities, which can be reflected in the procurement plans. This process is similar to the participatory budgeting, a democratic process in which citizens decide how to spend part of a public fund.

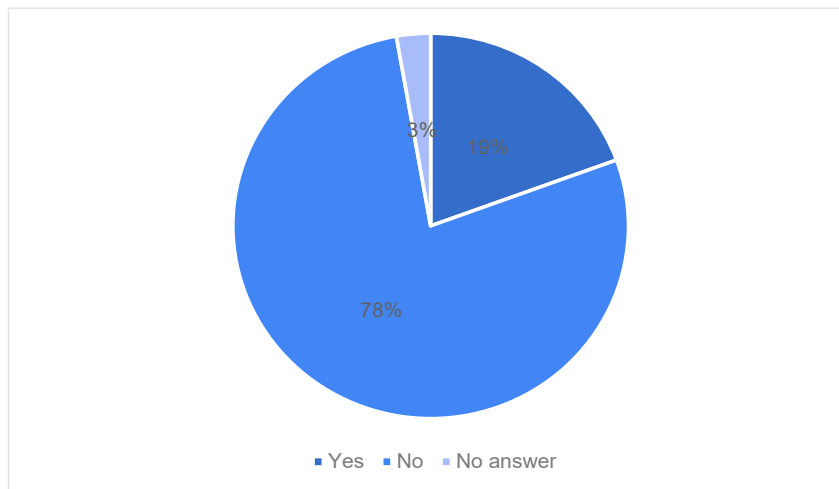
Participation in individual public procurement projects

- Oversight of individual procurement procedures

Governments and contracting authorities invite civil society and citizens to monitor individual procurement projects. This oversight and monitoring mechanism can contribute to increasing transparency in public procurement through direct social control, and therefore in gaining trust in public decision-making.

According to the responses to the OECD survey, citizen participation is not deeply rooted in the public procurement processes in Costa Rica.

Figure 4.1. Has your organisation invited a civil society to participate in the activities related to public procurement?



Note: 36 contracting authorities provided a valid answer

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey

Only 19 % of respondents implemented initiatives involving citizens in their public procurement activities such as:

- Receiving proposals from civil society on the feasibility of construction projects
- Organising face-to-face meetings with citizens on specific projects throughout the project cycle (planning, progress in the implementation, etc.)
- For the projects that have great social and environmental impacts, establishing communication mechanisms between the community and public entity

This section will analyse civil society's participation in procurement processes in Costa Rica in order to provide recommendations.

Civil society participation in enhancing the public procurement system in Costa Rica

Consultations for reforming the public procurement system

Stakeholder participation in the public procurement policy cycle has many advantages. It enables the identification of undesirable impacts of new measures, and the evaluation of their effectiveness. It also enhances trust in the system, which is key for some stakeholders such as economic operators as this influences their participation in public procurement opportunities (OCDE, 2019^[3]).

The OECD Recommendation on public procurement recommends that countries develop and follow a standard process when formulating changes to the public procurement system. This standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options chosen, all in a transparent manner. (OECD, 2015^[4])

In Costa Rica, public consultation mechanisms are accounted for in the regulatory framework. Indeed, the General Public Administration Law (6227) and the Law for Protecting the Citizen from Excess Requirements and Administrative Procedures (8220) and its regulation require that any new law needs to follow a public consultation process for at least ten working days, so that every interested stakeholder has

the opportunity to send comments or request amendment. After providing comments, the government must address them, giving the reasons for acceptance or rejection.

Currently, Costa Rica is in the process of reforming its public procurement system. Based on information received, public consultations are taking place with some business associations and civil society organisations and not directly with citizens in line with the consultation process foreseen in the Costa Rican regulatory framework. In addition, the draft public procurement law is published on the website of the Legislative Assembly (Asamblea Legislativa de la Republica de Costa Rica, 2019^[5]).

Some business associations and civil society organisations that responded to the OECD survey mentioned that they were consulted on the DPPL. They highlighted the need for more opportunities of involvement in activities aimed at enhancing the procurement system, such as participating in different thematic working groups.

In addition, it is pivotal to establish continuous channels to discuss the public procurement system with the different stakeholders on a regular basis. Article 130 of the DPPL stipulates that the ACP will prepare the guidelines by consulting different stakeholders including citizens, at least for the following:

- Establishing the relationship between the procurement plan and the budget with the PNCP and institutional plans
- Ensuring the standardisation of goods and the promotion of consolidated purchasing to generate savings through economies of scale
- Promoting regional development, innovation, inclusion, sustainability and promotion of SMEs through public procurement.
- On the professionalisation of the public procurement workforce, establishing the certification, continuous training and accreditation of contracting authorities

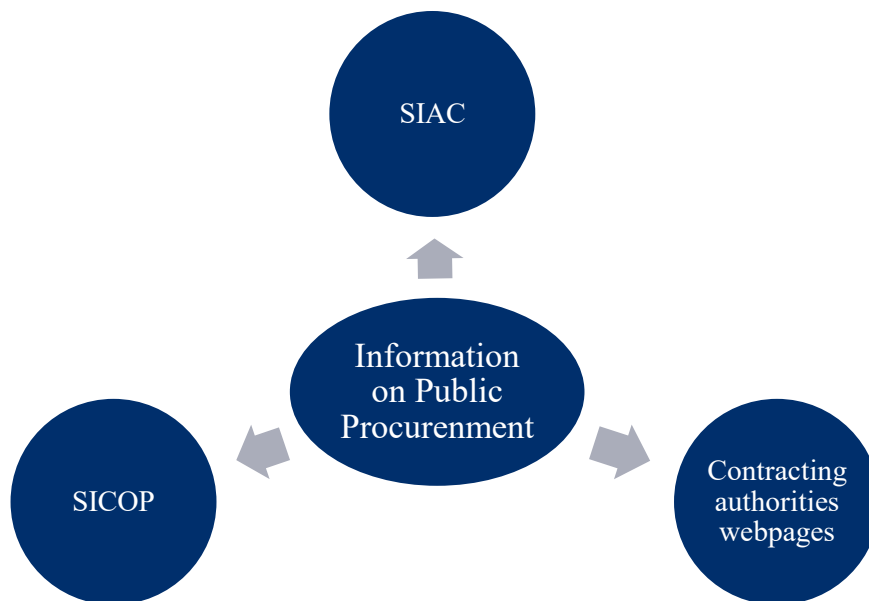
However, no information is available on stakeholders' consultation taking place outside of the reforms to the public procurements system and its consultation.

Oversight of public procurement spending

Civil society can play a key role in monitoring public procurement spending. To do this, it is key to provide them with timely access to relevant information. Indeed, the OECD Recommendation on Public Procurement highlights the need for countries to allow free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public, to public procurement information. This notably relates to the overall public procurement system, specific procurements (e.g. procurement forecasts, calls for tender, award announcements), and the performance of the public procurement system (e.g. benchmarks, monitoring results). Published data should be meaningful for stakeholder uses. (OECD, 2015^[4]). Therefore, there are two elements to consider: i) the platforms to access information and ii) the information provided through those platforms.

Access to information is covered by several different laws including the public procurement law (hereinafter referred to as "LCA"). In Costa Rica, there are three main sources of information on public procurement (see Figure 4.2). Articles 40 and 40 bis of the LCA state that every contracting authority must publish relevant information on their procurement activities not only on their website but also through the e-procurement platform SICOP. In addition, the Integrated System of Contractual Activity- SIAC (Sistema Integrado de la Actividad Contractual) which is managed by the CGR, provides key information on public procurement spending. In the section, "Consultation of Procurement with Public Funds" (Consulta de Compras con Fondos Públicos), a wide variety of procurement spending information is provided to any interested party.

Figure 4.2. Source of information on public procurement



The use of an e-procurement platform throughout the public procurement cycle is key to generate information and data to interested parties. The public procurement regulatory framework requires contracting authorities to use SICOP, Costa Rica's e-procurement platform. Indeed, the use of SICOP enables different stakeholders to generate information that can be made available to the public. SICOP includes a section called "public consultations" (*consultas ciudadanas*) that provides relevant information to the public on the following:

- General reports on public procurement
- Public procurement values contracted by each contracting authority
- Amounts received by each economic operator
- Sanctions for economic operators and procurement officials

The system does not, however, provide real-time detailed information on all procurement activities of each contracting authority. The data available is only amassed at the aggregated level. In addition, there are two main limitations in the information provided through SICOP. First, in practice, SICOP's uptake is still relatively limited, as only 84 % of public entities were using it in January 2020 despite it being mandatory since 2016. (Radiográfica Costarricense, 2020^[6]) The limited uptake of SICOP hinders the availability of comprehensive information on the public procurement system. The use of SICOP by all public entities is expected to be completed by 2021. Furthermore, the information available on SICOP concerns only the pre-tendering and the tendering phase. Information on contract management is not available, as the tool does not cover yet the whole procurement cycle.

Civil society organisations that responded to the OECD survey mentioned that SICOP is a complex tool that is difficult to use, in particular in order to perform social control. This observation is shared by business organisations. They consider it essential to have a user-friendly system with search functions that provide reliable, complete, timely, and accurate data.

In addition, all public entities subject to the LCA are required to include a link to SICOP in their website, and to publish at the very least the following information in a friendly way on their own websites:

- announcement on the administrative decision to start a public procurement process, and goods/services to be procured

- main contents of the tender documents
- bid proposals submitted
- successful bidder with the reasons and criteria that justify the contract award
- main contents of the contract documents

While the obligation of publishing information on their websites is clearly mentioned in the law, the OECD team noticed that contracting authorities do not always respect it.

The DPPL highlights in its introduction the key role of transparency and access to information for civil society participation in public procurement. The requirements regarding the access to information are highlighted in Article 16 and 19 of the DPPL. Indeed, the articles stipulate that SICOP should generate information related to all procurement phases, and include an interface that would allow different stakeholders to access public procurement information. This can enable them to analyse the efficiency and effectiveness of public procurement procedures. The DPPL also requires that information on public procurement should be available to the public so that any interested party can download, copy, manipulate, and/or reproduce it in digital formats without sending a special request for information disclosure to the Ministry of Finance. The effective implementation of all these provisions will therefore require the use of SICOP throughout the procurement cycle.

In addition to SICOP, SIAC also provides key information on public procurement spending. The information is timely and updated every day by contracting authorities. The following aggregated statistics are available for each fiscal year since 2013: i) Number of procurement procedures started, ii) Number of procurement procedures awarded and, iii) Awarded values. Furthermore, the breakdown of the said aggregated statistics is available by sectors (i.e. health, education, etc.), procurement procedures (open tender, simplified open tender, direct award) and by contracting authorities.

The OECD survey shows that civil society organisations and business organisations highlighted the following information is not available online:

- Name of officials in charge of a procurement procedure
- Information related to bid submission and tender evaluation such as price comparison, number of bidders, number of contracts awarded to suppliers.
- Information on the contract performance phase such as contract modification, starting date, compliance with the deadlines, application of penalties etc.
- Information on strategic procurement.
- Information on procurement activities between public entities (in-house contracts) as well as between public entities and international organisations

Currently, SIAC and SICOP are inter-connected. However, both platforms do not enable downloading data in a machine-readable format and they do not provide information on the implementation progress of each procurement project. Indeed, in countries like Italy, all interested parties are provided with actual data and information on the progress - in terms of spending and time - of each public work procurement project. The actual data is compared to the forecast. This enables a better oversight by civil society and reinforces accountability (Infrastructure and Transport Ministry - Italy, 2018^[7])

Costa Rica has been working on the adoption of the Open Contracting Data Standard (OCDS) in SICOP by including this initiative in the commitment No. 6 of the Action Plan of Open Government Partnership 2017-2019. Although the OCDS adoption is still in the implementation stage in Costa Rica, it will contribute to enhance transparency, accountability and participation in public procurement. (DGABCA, 2019^[8])

Recommendations:

Costa Rica should ensure the use of SICOP by all contracting authorities and provide functionalities covering the whole procurement cycle including contract management to enable an effective oversight of public spending by civil society.

The SICOP interface for civil society should provide detailed information in real time for every procurement procedure of each contracting authority.

Contracting authorities should publish information on their website on public procurement spending by integrating data from SICOP.

Costa Rica should consider the possibility of disclosing information on the financial and physical progress of each individual project to increase the accountability on public spending.

Consultations on citizen's needs / procurement plans

Public procurement can be considered as a tool to respond to the users' need. There are two categories of final users of procurement outputs: public entities who provide services to citizens and citizens. Therefore, it is key to collect citizen's needs at the source and to translate them into procurement plans after prioritising them. This reinforces trust in government and the transparency of the public procurement system (OCDE, 2019^[3]).

The process of consulting citizens on their needs is very close to the participatory budgeting process put in place in different countries including Korea and Portugal (OCDE, 2019^[3]). The participatory budgeting is not widespread in Costa Rica, and only a few municipalities have so far implemented it (LATINNO, n.d.^[9]).

In the current regulatory framework and in the DPPL, there is no mention of the necessity to take into account user's needs in the public procurement process. In practice, no information is available on how those needs are collected. However, ensuring a sound process to collect user's needs together with an adequate market analysis are key elements that will have impacts on the final procurement outcome.

Recommendation:

Costa Rica could benefit from developing mechanisms to collect citizen's needs and ensure their participation in investment decisions of the government.

Civil society participation in overseeing individual procurement processes in Costa Rica

Direct social control is an effective tool to increase transparency in public procurement processes. There are different mechanisms that can be implemented to ensure direct control on public procurement activities. The first mechanism is called "Social witnesses." It enables citizen participation in public procurement activities by verifying that procurement procedure and processes are in line with the public procurement regulatory framework. Social witnesses have been established in different countries including Mexico and Peru; their implementation required an adequate institutional and regulatory framework (OECD, 2019^[10]).

The second mechanism to enable direct social control is the provision of tools and platforms to report any issue related to public procurement or unsuccessful procurement projects. This mechanism has been implemented in different countries including Tunisia and Colombia. Box 4.2 provides a description of the mechanisms implemented in some Latin American countries.

In Costa Rica, the current public procurement regulatory framework does not include provisions to enable direct social control on procurement activities. Although the DPPL highlights the key role of civil society in enhancing public procurement processes, such mechanisms have not been mentioned. Furthermore, no tools have been developed to report irregularities in the procurement projects.

DGABCA and the Innovation Centre in Public Administration (INNOVAAP) of the Public Administration School of University of Costa Rica established in 2019, the Open Contracting School (Escuela de Contrataciones Abiertas). This program aims at providing capacity-building activities on open contracting for 30 people selected from the private sector and civil society. This initiative represents an important step to improve civil society participation in public procurement operations.

Box 4.2. Citizen participation mechanisms in public procurement processes in Latin America

In Mexico, social witnesses are required to participate in all stages of the federal public procurement procedures above certain thresholds as a way of promoting public scrutiny. Social witnesses are non-governmental organisations or individuals selected by the Ministry of Public Administration (SFP). The SFP is responsible for keeping a registry of the selected social witnesses and evaluating their performance. This monitoring by social witnesses has had an impact on improving procurement procedures, and has contributed to ensuring the transparency and credibility of the public procurement system in Mexico.

In Peru, the Comptroller General of the Republic (CGR) launched a citizen control mechanism called *Monitores Ciudadanos de Control*. Citizen monitors will visit construction sites at the beginning, during, and/or upon completion of public works in order to monitor the construction. Since its launch in 2018, CGR has registered about 1 400 citizen monitors, and about 300 construction projects were subject to this monitoring. CGR plans to increase the number of citizen monitors by 2 000 in 2019. CGR also launched a portal site INFOBRAS (Sistema de Información de Obras Públicas, Public Work Information System) in order to reinforce the transparency of infrastructure projects. Citizens can access the information of each construction project, such as progress and visual images of construction.

In Colombia, the Secretariat of Transparency of the Presidency of the Republic launched an anti-corruption mobile application called *Elefantes Blancos* in order to promote the citizen control of white elephant projects (neglected, abandoned or overbilled public works projects). Citizens can use this mobile application to report white elephant projects, obtain information on the projects reported by other citizens, and follow up with the updated information of case investigations. Since its introduction in 2013, this smartphone application has contributed to identifying 54 white elephant projects. Incomplete construction projects are estimated to have cost the country 163 million Colombian pesos. (Apolitical, 2017^[11])

Source: (Congreso General de los Estados Unidos Mexicanos, 2014^[12]) (Contraloría General de la República, 2018^[13]) (La Secretaría de Transparencia de la Presidencia de la República, 2014^[14])

Recommendation:

Costa Rica could benefit from introducing a direct social control mechanism in its public procurement regulatory framework. It could also develop mechanisms to enable citizens to report any irregularity in relation to public procurement activities.

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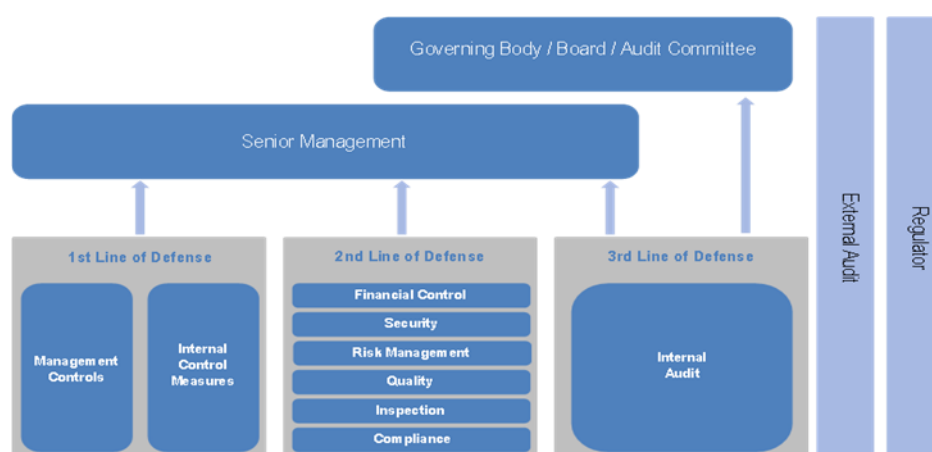
5 Enhancing the control of the public procurement system

Introduction

Effective control mechanisms are essential in supporting accountability and promoting integrity in the public procurement process. They also generate valuable evidence on the performance and efficiency of the procurement cycle. (OECD, 2016^[1])

Indeed, the 2015 “OECD Recommendation of the Council on Public Procurement” calls upon countries to “establish clear lines of oversight for the public procurement cycle to ensure that the chains of responsibility are clear, that oversight mechanisms are in place and that the delegated levels of authority for approval of spending and approval of key procurement milestones is well defined. Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition (OECD, 2015^[2]).” In addition, the OECD Recommendation of the Council on Public Integrity also advises that countries apply a control and risk management framework to safeguard integrity in public sector organisations (OECD, 2017^[3]) Effective control systems should be accompanied with an effective data collection system to facilitate monitoring and evaluation. They also require having a strong institutional framework in place following the three lines of defence model as per below. Considering this and the relevance of public procurement in any given country, it is evident that designing control systems tailored to the procurement function is essential.

Figure 5.1. Three Lines of Defence Model of the IIA



Source: (The Institute of Internal Auditors, 2013^[4])

External controls are essential to ensure efficient spending of public money. Depending on the countries, those controls can be *Ex ante* and/ or *Ex post*. *Ex ante* controls are those operated by a supervisory body to approve a decision before implementation, while *ex post* controls are those operated after implementing decisions. (Ruffner and Sevilla, 2006^[5]). In Costa Rica, the Comptroller General Office of the Republic (La Contraloría General de la República, CGR) is the governing body of the supreme control and audit system. The following section will analyse the external audit system operated by the CGR and will provide recommendations to enhance the system in place.

Moving from *ex ante* controls performed by the CGR and strengthening the internal control system

Ex ante control

The trend throughout OECD countries in terms of audits has been to move from *ex ante* to *ex post* controls, usually taking into account criteria like the relevance of the procurement volume and risk assessment

frameworks. Indeed, *ex ante* controls have the advantage of being able to prevent any damage before it occurs but they may also create an excessive amount of work and overlap with other responsibilities. They can also limit the accountability of decision makers within public entities (OECD, 2015^[6]).

In Costa Rica, under the current regulatory framework, the use of exceptions to ordinary procedures is the responsibility of the head of the public entity, who should always duly justify their decision. (Article 135 of the RLCA). However, the CGR has to approve five categories of exceptions. In 2017, exceptions approved by the CGR accounted for 7.44% of exceptions to ordinary procedures in terms of value and 0.69% in terms of the number of procurement procedures for entities subject to the LCA. Table 5.1 provides a description of the controls operated by external actors when using exceptions to ordinary procedures in 2017.

Table 5.1. Controls operated by external actors when using exceptions to ordinary procedures in 2017

	Controls by the CGR or other entities	Share of exceptions to ordinary procedures (value)	Share of exceptions to ordinary procedures (number of procedures)
Procurement volume		69.28%	75.31%
Agreement with other countries or international entities subject to the public international law		1.2%	0.08%
In-house contracts		5.63%	0.91%
Single supplier		8.33%	6.27%
Artistic and intellectual goods and services		0.17%	1.02%
Social Communication Means		3.04%	2.53%
Subscriptions and purchase of bibliographic material		0.36%	0.50%
Training services		0.93%	4.50%
Urgent Legal services		0.01%	0.08%
Indeterminate repairs		0.51%	4.66%
Confidentiality		0.30%	0.10%
Willingness to work with the Administration		0.27%	0.10%
Real estate	X	0.54%	0.01%
Unique goods (leasing)		0.27%	0.10%
Unique goods (procurement)	X	2.38%	0.46%
Unpredictable situations		0.84%	0.86%
Vehicles Rental	X	Less than 0.01%	0.04%
Arbitration and conciliation services		Less than 0.01%	Less than 0.01%
Fuel		0.48%	1.32%
Sponsorship		0.46%	0.61%
Advisory services for Internal Audits		0.07%	0.01%
Urgent procurement	X	0.73%	0.02%
Procurement with petty cash		Less than 0.01%	0.05%
Goods and services procured outside the country		0.46%	0.17%
Exclusion by international instruments		0.01%	0.05%
Building and maintaining Educational infrastructure	Ministry of Public Education and Ministry of Public Works and Transport	Less than 0.01%	0.01%
Other exceptions authorised by the CGR	X	3.78%	0.16%

Source: LCA and RLCA

However, the CGR's *ex ante* control function does not exist in the majority of OECD supreme audit institutions (SAIs). The Lima Declaration indicates that *ex ante* control may be carried out by institutions other than SAIs or other audit institutions. (OECD, 2015^[7]).

According to the OECD survey, 25% of contracting authorities think that the ex-ante control system is “Efficient.” They consider that the CGR has an experienced team that provides valuable feedback. However, contracting authorities highlighted the need to speed up the process.

58% of contracting authorities considered the efficiency of the ex-ante control operated by the CGR as “Moderate,” while highlighting key issues with the current system such as:

- The lack of agile processes
- The use of ex-post control is more efficient than ex-ante control.
- The lack of deep analysis when performing ex-ante controls
- The focus is mainly on the legality of procedures and not on their efficiency.

As mentioned in a previous section, in the DPPL the CGR is no longer in charge of performing ex-ante controls for authorising the use of exceptions to competitive tendering. Therefore, the separation of duties between performing the ex-ante control and being the remedies body is respected (OECD, 2019^[8]). Indeed, in the DPPL, heads of public entities and managers are fully accountable on their decisions. However, it is expected that each contracting authority monitors the use of exceptions to competitive tendering (Article 4 of the DPPL).

Internal control

Moving from ex-ante control to ex-post control requires strengthening the internal control system, and in particular the internal audit function, to make sure that public money is spent efficiently.

In Costa Rica, Internal Control Law (Ley General de Control Interno), No 8292, defines the minimum standards of the internal control systems in the public sector. This Law requires each public entity to establish not only an internal control system at operational level (Article 7) but also an internal audit unit to evaluate the sound functioning of the internal control system (Article 20). The CGR has technical and regulatory stewardship over the internal control system and performs audits on the internal audit units (in general, five internal audit units per year). The head of a public entity and the head internal audit unit are in charge of ensuring that the internal audit adequately performs its function. The internal audit unit of each contracting authority is required to perform a self-evaluation each year. The CGR also audits approximately five internal audit units each year. In addition, the CGR prepared a supplementary tool called the Institutional Administration Index (Índice de Gestión Institucional, IGI) which includes indicators on internal control. The results of the self-evaluation are submitted each year to the CGR. (See Box 5.1)

Box 5.1. Institutional Administration Index

Since 2010, the CGR uses an instrument called the “Institutional Administration Index” (Índice de Gestión Institucional, IGI) to measure efforts made by public entities to reinforce their administrative capacity. This instrument enables public entities to identify gaps that need to be filled. . The IGI is based on “Yes,” “No,” or “Not applicable,” questions on seven areas: planning (16 questions), financial & accounting management (13 questions, not applicable to the entities of the central government), internal control (16 questions), public procurement (15 questions), budget (18 questions), IT (16 questions), user service (13 questions), and human resources (17 questions).

Questions on internal control are mainly related to anti-corruption issues such as the availability of a code of ethics, mechanisms to prevent, detect and correct unethical situations, publication of the internal audit report in the website etc. They do not directly focus on the internal control system of public procurement.

Questions on public procurement are:

- Has the unit been formally established to carry out the public procurement process?
- Are there internal technical regulations on the public procurement process?
- Are the roles, responsibilities and co-ordination of the officials assigned to the different activities related to the public procurement process formally defined?
- Is the maximum timeline formally defined to carry out different activities related to the public procurement process?
- Is a supplier registry maintained and updated? Is the information on the suppliers prohibited from participating in the public procurement process available in the supplier registry?
- Is an annual procurement plan prepared with the minimum required information, and published in the website?
- Does the institution define the maximum and minimum limits of the acceptable prices based on the reference price?
- Do the internal regulations on public procurement include specific regulations on price adjustments?
- Does the institution use e-procurement to generate the information that the public can have access to, in relation to the progress of the execution of the procurement plan?
- Does the institution carry out, at the end of the corresponding period, an evaluation of the implementation of the procurement plan, its effectiveness and its alignment with the strategic plan? Does the institution publish it on its website or by other means? Does the institution also prepare improvement plan as a result of the evaluation?
- Is the pertinent information updated in a timely manner in the SIAC?

Source: Índice de Gestión Institucional 2018

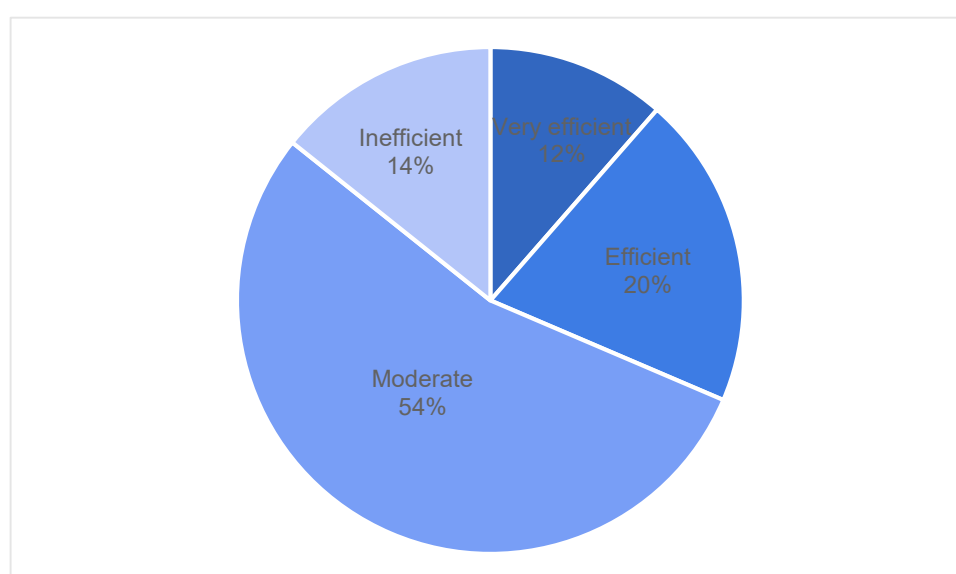
In order to support contracting authorities, the CGR issued guidelines on internal control for the internal audit units. The CGR also developed a tool for contracting authorities to assess their internal control system. This tool is called “Model of Maturity of the Internal Control System” (*Modelo de Madurez del*

Sistema de Control Interno). This self-assessment tool has been used by several entities in Costa Rica that publish the results online.

According to the OECD survey, 82% of contracting authorities have received recommendations or suggestions on the public procurement system from their internal audit in the last three years. Internal auditors provided recommendations not only on their internal control system but also on specific issues and tools such as manuals of procedures. However, contracting authorities have quite different views on the quality of the internal audit carried out at their institution, which clearly highlights the need to continually develop capabilities.

Figure 5.2. Feedback from contracting authorities on the efficiency of internal audit ?

Views on the internal audit differ among contracting authorities



Note: 35 contracting authorities provided a valid answer. Efficiency refers to how much the internal audit contributes to improving public procurement processes.

Source: Prepared in accordance with the responses to the questionnaires of the OECD survey

32% of contracting authorities have a positive view (“Very efficient” or “Efficient”) on the internal audit as they provide recommendations with added-value to improve the procurement processes, and prevent risks by providing periodic feedback. However, more than half of them rated their internal audit system as “Moderate” with the following mixed comments:

- The internal audit examined procurement processes. This led to the improvement of public procurement system
- They carry out reviews on an irregular basis to verify compliance with the regulatory framework, but they are not guaranteed to be carried out every year
- Lack of capacity of internal auditors on public procurement hinders the benefits of internal audit.

14% of contracting authorities classified it as “Inefficient,” with the following views:

- Lack of capacity and high use of sanctions. Internal auditors are not familiar with public procurement, and often propose recommendations based on insufficient knowledge.

- Burdensome process for public procurement officials.
- Officials are aware that the internal audits have been carried out, but no reports are received.

Contracting authorities have different view on the quality of internal audit, and it tends to depend on the capability of the internal auditor. Therefore, Costa Rica could consider conducting an in-depth assessment of the efficiency and the effectiveness of the internal control system. The Institutional Administration Index (IGI: Índice de Gestión Institucional) does not directly measure the efficiency and capacity of internal audit units. In addition, the CGR could consider implementing a pilot project to strengthen the internal control system of public procurement, as in the case of Peru. (See Box 5.2)

Box 5.2. Pilot projects to support the internal control system of public procurement in Peru

General Comptroller of the Republic (CGR) of Peru took the initiative to strengthen internal control systems of public procurement by supporting pilot entities as they implemented internal control systems.

In 2015, the CGR implemented pilot projects for 15 entities at central and subnational levels over a period of eight months. They aimed to institutionalise the internal control system in these entities while generating good practices which could be replicable in other entities. The CGR also provided them with the implementation guidelines. These pilot projects led to fruitful results: (i) greater awareness of internal control by the management; (ii) trainings on internal control; (iii) the identification of risks and gaps related to public procurement processes of pilot entities as well as the development of guidelines to mitigate these identified risks.

In 2016, the CGR extended these pilot projects to additional 250 entities at subnational level. The CGR defined specific steps for the implementation of the internal control system in public procurement cycles such as planning and evaluation phases. It also organised training workshops for these 250 entities in 15 regions from January to May 2016, and developed specific guidelines for the entities. The implementation guidelines included general information on the legal framework as well as the objectives for the initiative, step-by-step guidance on the activities to be implemented by the entities, and specific templates to help the entities in implementing activities.

The initiatives developed by the CGR of Peru represent a good example on how public entities can be supported in the implementation of internal control.

Source: (OECD, 2017^[9])

The OECD Recommendation on public procurement calls on Adherents to “integrate risk management strategies for mapping, detection and mitigation throughout the public procurement cycle”. In 2019, only 52% of surveyed countries developed a strategy to assess, prevent and mitigate public procurement risks (OECD, 2019^[10]). Aware of the importance of risk management in public procurement processes, Article 131 of the DPPL stipulates that the DCP will be in charge of managing risks in public procurement and adopting control measures to mitigate those risks. However, this article does not mention the different categories of risk managed by the DCP and the methodology that should be followed.

Recommendations:

Costa Rica could consider conducting an in-depth assessment of the efficiency and the effectiveness of the internal control system in public procurement before adjusting the ex-ante control mechanisms.

Based on those results, Costa Rica could take action at all levels of government to reinforce the internal control system, including the capacity and capabilities of internal auditors, through a tailored training programme to ensure the efficiency of the system and the good use of public money.

Costa Rica should consider developing a strategy on risk management in public procurement, considering all the risks that could impact the well-functioning of the public procurement system.

Towards performance audits and simultaneous control

In addition to ex ante control, the CGR also carries out ex post control. As mentioned in Article 11 of the Organic Law of the Comptroller General of the Republic (Ley Orgánica de la Contraloría General de la República), No 7428, the role of the CGR is to ensure the compliance of public entities with the regulatory framework but also the efficiency of their spending. Therefore, it should undertake compliance audits but also performance audits. However, stakeholders mention that ex post controls in particular performance audits are limited and the CGR should reinforce this role. (OECD, 2015^[6])

According to the OECD survey, the views of contracting authorities on the ex-post control by the CGR is mostly positive, but with room for improvement. 36% of them rated it as “Efficient,” due to providing feedback on how to improve procurement processes. Conversely, only 6% consider that the ex-post control is “Inefficient,” with 53% of respondents considering an ex-post control by the CGR as “Moderate” with the following comments:

- The processes are necessary but burdensome
- The recommendations are not always fully implemented
- Ex-post control seeks to find irregularities, and does not allow contracting authorities to be more proactive during the process.

Box 5.3 provides key questions developed by the European Court of Auditors (ECA) to evaluate the performance of the procurement function in public sector bodies. This evaluation can be made at three levels: i) Meta level: Assessment of the government’s overall procurement strategy, ii) Macro-level: Assessment of the department’s procurement function/unit, and at the micro-level: Assessment of a single procurement project.

Box 5.3. Key questions developed by the European Court of Auditors (ECA) to evaluate the performance of the procurement function in public sector bodies

Meta level – assessment of the government’s overall procurement strategy

1. Does government have an overall procurement strategy and/or policy?
2. Do government policies promote and/or safeguard fair competition?
3. Are procurement policies and practices in line with (international) good practice standards?
4. Is the performance of the several procurement functions/units in the different stages of the procurement process benchmarked against each other?
5. Are prices/qualities obtained by the several procurement functions/units compared as to highlight competitive results or improved value for money?

Macro level – assessment of the department’s procurement function / unit:

6. Are outsourcing and Public Private Partnerships considered as alternatives to in-house work?
7. Does the department have a procurement strategy and is it implemented?
8. Is the department’s procurement function/unit well organised?
9. Is the procurement process well organised?
10. Do the employees have the necessary skills and experience to carry out procurements efficiently?
11. Are there appropriate controls in place to ensure that procurement complies with the relevant legislation?
12. Are there mechanisms in place to evaluate the performance of the department’s suppliers?
13. Are risks managed to provide reasonable assurance regarding department procurement-objectives?
14. Are there regular reviews and analysis of the performance of the procurement function/unit?

Micro level – assessment of a single procurement project

15. Does the procurement project have a clear goal and does the goal meet the specified needs of the users?
16. Is the procurement project efficiently managed?
17. Are there appropriate controls in place to ensure that the procurement project complies with relevant legislation?

Source: (ECA, 2018^[11])

In addition, when deciding to move from ex-ante controls to ex-post controls some countries such as Peru and Colombia decided to introduce a new type of ex-post control: “the simultaneous control / the concurrent control “ or “real time control”. This type of control has been implemented to identify risks that might have impacts on ongoing public investment operations. It has been enacted to avoid only identifying problems such as inefficiencies and corruption at the ex-post control stage. The use of data and data analytics to inform risk management and controls can be particularly useful from this perspective. Box 5.4 describes the benefits of real-time controls of supreme audit institutions. The CGR is entitled to undertake these kind of controls as part of its mandate of monitoring public funds. However, no specific criteria have been set on (i) which projects are subject to the concurrent control, and (ii) whether it can be requested by stakeholders such as public entities, the government and the legislative assembly.

Box 5.4. Parallel or the concurrent control in Peru and Colombia

Real-time audits, sometimes referred to as “ad hoc audits” or “real-time evaluations,” are mechanisms for strengthening accountability and integrity on an ongoing basis without waiting to report on issues at legally mandated intervals. They allow audit institutions to monitor the performance of projects and offer recommendations to audited entities before the completion of a project. For example, an SAI might conduct a real-time audit to measure the effective and efficient use of public funds, the quality of an ongoing service, or potential wrong-doing. While real-time audits are widely used, they may pose risks and challenges that SAIs should take into account. One risk is that SAIs become, or are perceived to be, “co-decision makers”, potentially compromising their independence. Therefore, it is important that SAIs familiarise themselves with the drawbacks and risks of real-time audits before conducting them. Benefits of real-time audits include:

- Supply of in-depth, timely information to support Congress’ control over the budget allocation
- aid the Executive Branch in immediately applying lessons learnt from previous audit findings
- lessen risks of poor decision making and mismanagement
- allow for immediate corrective actions in response to identified irregularities outside of the normal audit programming.

INTOSAI covers real-time audits in its Peer Review Check List Guide for Supreme Audit Institutions: “Are there any rules authorising the SAI to perform audit work at an early stage of a project or programme?”. SAIs worldwide employ real-time audits. For example, under the auspices of the European Neighbourhood Policy, the SAIs of Germany and Poland – the German Bundesrechnungshof (BRH) and Polish Najwyższa Izba Kontroli (NIK) - performed a twinning project at the State Audit Office of Georgia from 2014 to 2016. The project aimed at transferring knowledge and leading practices on different kinds of audit procedures, including real-time audits. In both Germany and Poland, real-time audits are performed in major projects covering infrastructure investments, defence procurement, information technology, education and market stimulation programmes.

Source: (OECD, 2017^[12])

Recommendation:

Costa Rica could explore the possibility of promoting the use of the parallel or concurrent control on specific projects based on requests from public entities or from the government or the legislative assembly. As seen in many OECD countries, these projects could be chosen based on specific criteria, like scale, cost and strategic nature.

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Towards a new vision for Costa Rica's Public Procurement System

ASSESSMENT OF KEY CHALLENGES FOR THE ESTABLISHMENT OF AN ACTION PLAN

This draft report provides key recommendations to Costa Rica on five priority areas, mirroring the five key challenges identified by the government and public procurement stakeholders: (i) the institutional framework of the public procurement system; (ii) the strategic use of public procurement; (iii) the professionalisation of the public procurement workforce; (iv) the participation of civil society in the public procurement system and; and (v) the control of the public procurement system.

The recommendations provided in this report will be used as a key input for Costa Rica to prepare an adequate implementation action plan to reinforce its public procurement system.

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