

# Public food procurement and the support of smallholder farming: the importance of a conducive regulatory framework

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Inclusive public food procurement initiatives are relevant policy instruments to support smallholder farmers and their integration into formal markets. They are based on the premise that public institutions, when using their procurement power to award contracts, can go beyond the immediate scope of simply responding to the state's procurement needs by addressing additional social, environment or economic policy goals. Their implementation, however, requires a conducive public procurement regulatory framework.

A key distinctive characteristic of public procurement is that the process whereby governments acquire goods, works and services to fulfil their public function is regulated by specific rules. In most countries, public procurement regulations govern each phase of the process and impose instruments to achieve traditional procurement objectives and principles, including: a default procurement method (i.e. the open tendering procedure) and specific criteria to award contracts. They also impose and/or shape specific administrative practices, including procedures for publishing tender opportunities; the size of contracts; payment terms; and eligibility requirements.

Most often these standard procurement rules and practices do not tally with the characteristics and capacities of smallholders, which can represent a key entry barrier for smallholder farmers who are trying to tap into public markets and, as such, an impediment to the implementation of food procurement initiatives that seek to target them (Swensson 2018).

Analysis of public procurement literature and country experiences reveals that there are various types of mechanisms that can be used to build a conducive regulatory framework for supporting smallholder farming through public food procurement. These are widely discussed in the relevant legal literature (e.g. Watermeyer 2004). Nevertheless, there is still a lack of dialogue between this literature and the public food procurement debate within the context of rural development.

The Table provides a brief description of key legal mechanisms and their adoption within food procurement and school feeding contexts.

The analysis reveals that these legal mechanisms (i.e. preferential procurement schemes) play a key role in incorporating broader policy objectives—including the support of smallholder farmers—into the rules of public procurement. It also shows that the use of these mechanisms may create tensions with the traditional objectives and principles of the public procurement regime in that different rules aimed at achieving different objectives may conflict with each other (ibid).

## Legal mechanisms and their adoption within food procurement and school feeding contexts

| Legal mechanism | Description   | Country example  |
|-----------------|---|--|
| Reservation     | Contracts or portions thereof are reserved for a certain category of contractors (target beneficiaries) who satisfy certain prescribed criteria.  | Brazilian National School Feeding Programme (Law No. 11.947/2009).   |
| Preferencing    | Although all contractors who are qualified to undertake the contract are eligible to tender, competitive advantages are granted to those who satisfy prescribed criteria or commit to attain specific goals in the fulfilment of the contract.  | United States Department of Agriculture (USDA)'s Child Nutrition Programmes. (Public Law No. 110-246 of 18 June 2008). |
| Indirect        | Although public institutions do not procure directly from target beneficiaries, procurement requirements are used to promote policy objectives by constraining contractors to attain specific goals (e.g. requiring contractors to supply at least a percentage of products from target beneficiaries). | Paraguay National School Feeding Programme (Decree No. 3000/2015 and Resolution DNCP 2915/2015).                       |

Source: Author's elaboration and Watermeyer 2004.

Despite the differences between the various legal mechanisms, a common characteristic across all country experiences is the recognition that the use of public food procurement as an instrument to support smallholder farming cannot mean the simple overlaying of this objective—at any cost—upon all other goals and principles of public procurement. The application of preferential procurement schemes requires the management of trade-offs and the establishment of conditions and safeguards to ensure that it achieves an appropriate balance. It requires, therefore, careful regulatory design.

An analysis of the different country experiences demonstrates that it is possible to use preferential procurement schemes for supporting smallholder farming while maintaining an appropriate balance with the traditional principles of the public procurement regime. It also shows the importance of a well-designed regulatory framework and its key role in the implementation of public food procurement initiatives targeting those actors.

### References:

- Watermeyer, R. B. 2004. Facilitating sustainable development through public and donor regimes: Tools and techniques. *Public Procurement Law Review*, 1, 30–55.
- Swensson, L.F.J. 2018. "Aligning policy and legal frameworks for supporting smallholder farming through public food procurement: The case of school feeding programmes." *Working Paper* No. 177. Rome: Food and Agriculture Organization of the United Nations, and Brasília: International Policy Centre for Inclusive Growth.