

Sustainable Food Procurement

Legal, Social and Organisational Challenges

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National School Feeding Programme
(Programa Nacional de Alimentação
Escolar – PNAE)**

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7 Sustainable public food procurement in Brazilian schools

An obligation under and beyond the National School Feeding Programme (Programa Nacional de Alimentação Escolar – PNAE)

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Introduction

With more than 15 million people employed in more than 5 million agribusinesses (IBGE, 2019), Brazil is one of the world's largest producers and exporters of agricultural products. Food production is very diverse due to the country's vast territory, varied climatic and geographical conditions, and rich biodiversity. Farm structures are also highly diverse: large, export-oriented farms dominate the agricultural sector, but millions of smallholders and family farmers are responsible for most of the food consumed by the Brazilian population (IBGE, 2019). Being one of the countries with the highest land concentration in the world (Luzzi De Campos & Goldfarb, 2021), Brazil is confronted with widespread rural poverty and pesticide-intensive monocultures that hinder the development of more diverse, equitable and sustainable agriculture. It is therefore mainly due to income distribution issues and affordability constraints (OECD/FAO, 2022) that the country still faces significant challenges related to food and nutritional insecurity, also aggravated by the COVID-19 pandemic, rising food inflation and the ongoing Russo-Ukrainian War. Access to healthy and nutritious food remains a major issue, with a high rate of obesity and overweight among adults, especially women and children.

In this context, Brazil's institutional food procurement programmes stand as strategic and comprehensive public policies for combating hunger and poverty and promoting rural and sustainable development. Dating back to 1955, the National School Feeding Programme – *Programa Nacional de Alimentação Escolar* (PNAE) – aims to contribute to children's development and the promotion of healthy eating habits by providing meals and food education in public schools throughout Brazil. The Food Purchase Programme – *Programa de Aquisição de Alimentos* (PAA) –, launched in 2003 in the context of the Zero Hunger strategy, aims to fight food and nutritional insecurity and encourage family farming. This programme marked the beginning of a major governmental intervention to stimulate demand

for smallholder production through public procurement, making Brazil the first country to adopt a policy of this kind (Swensson, 2019).

The PAA and the PNAE are complementary programmes, with similar objectives, national reach, and a focus on areas where family farming supply and vulnerable population demand converge (Bravo et al., 2022). Over time, several institutional and regulatory changes have been made to improve the programmes. In particular, preferential procurement schemes (Swensson & Tartanac, 2020) and a wide range of sustainability requirements connected to which food to purchase, from whom to source it and how to purchase it have been included.

Brazil, therefore, represents a very interesting case study for examining how the legal framework may support the strategic use of public food procurement to advance multiple sustainability objectives. The Brazilian experience also shows that, despite the favourable regulatory framework, structural barriers need to be overcome to achieve broad social and environmental goals. Several studies have explored the implementation of specific public food procurement initiatives (Soares et al., 2021; FAO, 2021; Kluczkowski et al., 2022). However the legal mechanisms that enable more equitable, diversified, and sustainable food procurement remain overlooked (Swensson & Tartanac, 2020).

The present chapter aims to fill this gap by analysing selected procurement rules that contribute to social and environmental objectives, supported, to the extent possible, by some findings from interdisciplinary literature. By relying significantly on sources in the original language, this qualitative study also aims at making knowledge about the legal aspects of public food procurement in Brazil available to a wider audience.

The focus of the analysis is on public food purchases under the PNAE, due to the author's research interest in the school environment and the variety of sustainability inputs provided by the programme. Yet, some aspects of the PAA and the overall public procurement framework will be also mentioned given their relevance for the study.²

Sustainable public food procurement under the National School Feeding Programme (PNAE)

An outline of the PNAE's evolution, objectives and organisation

With decades of history, Brazil's National School Feeding Programme is one of the largest school feeding programmes in the world, providing around 50 million free meals a day, reaching 40.5 million students and more than 160.000 schools in 5.570 municipalities (Bravo et al., 2022; Luzzi De Campos & Goldfarb, 2021; Schottz & Schmitt, 2021). Created in 1955, the programme was originally centralised, but in the 1990s was restructured to decentralise and divide responsibilities between different government levels (CMAP, 2020)³ PNAE is funded through a system of financial cooperation among different federal entities. The Brazilian central government pays a budget supplementation to States, municipalities and

federal schools based on the number of students enrolled in the public education system, which is to be used exclusively for food procurement.⁴

Law n° 11.947 of 16 June 2009 was a landmark in the evolution of the PNAE, as it established “the first direct and institutional interaction between the PNAE and family farming” (Marques, 2020). This law (2009) (hereinafter L.) contains the programme’s general rules.

This law has been extensively regulated by successive instruments. In particular, FNDE (2020) (hereinafter R.) “lays down the rules for the technical, administrative and financial execution of the PNAE, addressed to States, the Federal District, Municipalities and federal schools” (Art. 1 R.), providing for “the consolidation and refinement of standards that were previously scattered in several regulatory instruments” (first recital). FNDE (2020) is the primary source of the analysis that follows.

PNAE’s main objective is “to contribute to the bio-psychosocial growth, development, learning and school performance of students and the creation of healthy eating habits, through food and nutritional education and the provision of meals that cover their nutritional needs during the school period” (Art. 4 R.).

The main actors involved in the programme are listed in Art. 7 R. They comprise the National Fund for the Development of Education (FNDE) – linked to the Ministry of Education, responsible for coordinating, regulating and funding the programme; the Executing Entities (EEx) – State Education Divisions, municipal governments and federal schools, responsible for planning, managing and implementing the programme, including by using and complementing federal funding, as well as reporting and providing school meals and food education; the School Meals Council (CAE) – a collegiate body established at the State, Federal District and Municipal levels, in charge of monitoring, deliberating and advising on the programme⁵; and, finally, the Executing Unit (UEX) – a private non-profit entity representative of the school community, those responsibilities vary depending on the management model.

Each Executing Entity can define the management model of the programme (centralised, decentralised or mixed) and of the food service (self-managed or outsourced). In the centralised management, the EEx purchases the foodstuffs that are then supplied to school units for preparing and serving the meals. In the decentralised model, the EEx transfers financial resources to the school’s UEX, which directly purchases foodstuffs (Art. 8, I, II R.). It is interesting to highlight two points: first, a new system of payment, called PNAE Card Account, will become mandatory for the EEx to receive and use federal funds (Art. 47, XII R.) to improve procurement transparency by identifying suppliers and payments (COEFA, 2020). Secondly, the law sets specific obligations to ensure the viability of the decentralised model, as “the EEx must ensure the necessary structure” for the realisation of the due procurement process, the authorisation of expenses, management and execution of public contracts, the control of stock and storage of foodstuffs, as well as reporting and other measures for the proper use of financial resources (Art. 9 R.).

Finally, the monitoring of the programme is the responsibility of a numbers of governmental and non-governmental actors: the FNDE, the School Meals Councils,

the other entities responsible for the education systems, the Office of the Comptroller General (CGU), the Federal Audit Court (TCU), the Public Prosecutor's Office and society in general (Art. 63 R.). In fact, "any individual, association or union, as well as other legal entities that represent society in the control of public administration, has legitimation to denounce irregularities or illegalities in the execution of the PNAE to the FNDE" (Art. 66 R.).

The programme has been organised on the basis of decentralisation, collaboration between different actors and social participation. Decentralisation has improved the rationalisation of logistics and distribution costs (Marques, 2020). It has promoted responsiveness to local realities and a high standard of food provision, while also contributing to the development of local economies through the creation of institutional food demand at the municipal level (CMAP, 2020). Collaboration and social participation are manifest in the programme's decision-making, management and monitoring mechanisms, as well as in the legal framework (Schottz & Schmitt, 2021), thus contributing to the programme's democratisation (Marques, 2020).

In the next sections, sustainability requirements for school food procurement under the PNAE legal framework will be discussed.

Mandatory sustainable public food procurement under the PNAE

In attendance to the fundamental rights to education and food (Arts. 6, 205 and 208, Federal Constitution of 1988, hereinafter CFRB), PNAE affirms the right to (free) school feeding for all students of public basic education (from nursery to high school), and the respective State duty to promote it, observing the guidelines set by the law (Art. 3 R.). These are I – the use of healthy and adequate food; II – the inclusion of food and nutritional education in the school curriculum; III – the universality of the school feeding service; IV – community participation in monitoring of public authorities' agency to ensure the provision of healthy and adequate school meals; V – the promotion of sustainable development, incentivising the acquisition of diversified foodstuffs, produced locally and preferably by family farmers and rural family entrepreneurs, prioritising indigenous and *quilombola* communities (descendants of Afro-Brazilian slaves); and finally, VI – the right to school feeding, ensuring students' equal access to food and nutritional security and respecting biological and socio-economic differences (Art. 5). The acquisition of foodstuffs under the PNAE must observe these guidelines (Art. 13 L.; Art. 23 R.).

"What to buy" requirements

PNAE legislation sets several requirements affecting the definition of the subject matter of the contracts for school food. These requirements prescribe what can be purchased, what must be purchased, and what cannot be purchased.

First, the financial resources transferred by the FNDE under the PNAE can be used exclusively for the acquisition of foodstuffs (Art. 5°, §2° L.; Art. 47, caput; Art. 51, caput R.). Therefore, when outsourcing the catering service, the EEx can

use PNAE's funds to pay for meals (Art. 13 R.) or foodstuffs, while other expenses are to be borne with its own resources (Art. 51, §2° R.). In these cases, the EEx must ensure contractors' compliance with the relevant legislation and FNDE guidelines (Art. 13, 1°§ R.), and must ensure that they provide invoices specific to foodstuffs (Art. 27, II R.). Additionally, access to the facilities and the documentation necessary to verify compliance with the contract and the Programme's rules must be guaranteed to the EEx, CAE, FNDE, and other monitoring entities in both the tender notice and the contract (Art. 13, 2°§ R.).

The acquisition of foodstuffs under the PNAE must comply with the menu planned by the responsible nutritionist (RT), following the Resolution's provisions (Art. 23 R.). School menus must be developed by the PNAE nutritionist attached to the EEx, "based on the use of raw or minimally processed food, respecting nutritional needs, eating habits and local food culture, and aiming at sustainability, seasonality, the agricultural diversification of the region and the promotion of adequate and healthy nutrition" (Art. 17 R.). Menus must also be adapted to diagnosed special dietary needs (Art. 17, §1° R.) and to differentiated nutritional demands (Art. 12, §2° L., introduced by Law 12.982/2014), including vegetarian habits (COSAN, 2020b). They must also meet the cultural specificities of indigenous and/or *quilombola* communities (Art. 17 §3° R.).

Students' access to a greater variety of foods is also recommended, as an important indicator of diet quality and a factor that contributes to increased acceptance of the meals provided. The concept of variety is approached in two dimensions: food offered on menus weekly (Art. 19, §1° R.) and food products purchased annually (Art. 21, Parágrafo único, R.) (COSAN, 2020a).

Some requirements concern the minimum nutritional value of meals (Arts. 18–19 R.). Minimum levels of fruit and vegetables, vitamins and iron sources are set. To meet the requirement to provide foods containing heme iron at least four days a week, school managers may not serve vegetarian meals to all students for more than one day per week (COSAN, 2020b).

PNAE funds must be allocated as following: at least 75% must be used to purchase raw or minimally processed foods, a maximum of 20% for processed and ultra-processed foods, and a maximum of 5% for processed culinary ingredients (Art. 21 R.).

Finally, there are stipulations relating to products to be restricted and others prohibited, (Arts. 18, 19). Additionally, PNAE resources cannot be used to purchase a list of ultra-processed foods and beverages to prevent obesity, improve health and build healthier eating habits in the school environment (Art. 22 R; COSAN, 2020a).

The correct specification of the subject matter of contracts, in this case of foodstuffs, is an obligation of the public administration (Art. 15, §7° Law n° 8.666 of 1993; Art. 40, §1° Law n° 14.133 of 2021). This is essential for effective procurement. As reported by the Coordination of Food and Nutritional Security (COSAN), the lack of and/or inaccurate specification of foodstuffs in school feeding purchases constitutes a significant barrier in the purchasing process, leading to issues like delays or failures to satisfy the consumers' needs and higher costs (COSAN, 2016).

For this reason, PNAE nutritionists must participate in the procurement process with regard to the definition of specifications and quantities. Another mandatory technical activity for nutritionists is to engage with family farmers and their organisations to learn about local production (CFN, 2010). The key role of nutritionists in the implementation of the programme is evidenced also by the rule providing for the suspension of the transfer of financial resources to the EEx that has not registered the responsible nutritionist in the FNDE system (Art. 56 R).

It is important to emphasise that the decision to entrust the responsibility for menu design to nutritionists at the EEx level is crucial to allow states and municipalities to maintain their autonomy in defining menus and purchases according to local specificities.

Finally, the Resolution's part "on the food procurement process" opens with two general preferences, which are materialised through a number of rules and mechanisms that will be explored in the following sections. Firstly, the purchase must be made, whenever possible, in the same municipality where the schools are located. Buying local is expected. Secondly, organic and/or agroecological foods must be prioritised (Art. 23 R.).

Who-to-source-from requirements

Since 2009, the PNAE legislation requires part of the food to be sourced from specific groups of suppliers. Reserving procurement opportunities to specific categories of suppliers is a tool to overcome their inability to get access to public contracts under normal conditions of competition (De Schutter et al., 2021). The set-aside mechanism, or reservation scheme (Swensson & Tartanac, 2020), provides that

at least 30% of the financial resources transferred by the FNDE under the PNAE must be used to purchase foodstuffs directly from Family Farming and the Rural Family Entrepreneur or their organisations, giving priority to land reform settlers, traditional indigenous communities and quilombola communities.

(Art. 14 L. and Art. 29 R.)

If the tied funds are not used for the intended purpose, the EEx must repay them to the FNDE (Art. 29, § 1° R.). The set-aside obligation can only be waived in three circumstances, which must be duly proven (Art. 29, §2° R.).

How to buy food: Different procedures for different purposes

All contracts for the purchase of food under the PNAE are subject to the general public procurement regime (Law 8.666/1993 that will be replaced by Law 14.133/2021 from 30 December 2023). There is also an explicit legal requirement for transparency, as information on the food purchasing process must be broadly publicised (Art. 26 R).

The PNAE legislation prescribes two different procedures for purchasing foodstuffs, depending on the type of supplier. When purchasing from family farmers, the law allows a waiver of bidding (Art. 14, §1º, L.) and, since 2013, subsequent Regulations have prescribed a specific purchase process called public call (Rezende et al., 2022). With other suppliers the procurement must be made through a competitive bidding procedure in the form of an electronic reverse auction (*licitação, modalidade pregão eletrônico*) (Art. 24, II R). This kind of auction is a simpler and faster process compared to the traditional bidding and was created to enable a faster and more efficient procedure for day-to-day purchases by the Public Administration (see Decree nº 10.024 of 2019). Concerning this procedure, PNAE legislation adds two sets of rules to the general discipline, mainly aimed at ensuring proper pricing, transparency and accountability (Arts. 27–28 R.).

The public call: Purchasing from family farmers

Brazilian public food procurement law differs from that of many other countries in the extent to which it supports and encourages purchasing from family farmers.

In fact, under certain conditions, the law allows purchases from family farmers without competitive bidding. Prices must be consistent with those on the local market, food must meet the quality control requirements established by relevant rules (Art. 30 R.) and the constitutional principles of public administration – legality, equal treatment, morality, publicity, transparency and efficiency – must be observed (Art. 37 CFRB).

When these conditions are met, the EEx that opts for waiving the bidding procedure must purchase through a specific process called public call – *chamada pública* or *chamamento público* – which is similar to a request for proposals. This process is defined as “the administrative procedure aimed at the selection of a specific proposal for the purchase of foodstuffs from Family Agriculture and/or Rural Family Entrepreneurs or their organisations” (Art. 30, §1º, §2º R.).

The public call constitutes an exception to the Public Administration’s obligation to tender (Art. 37, XXI of CFRB and Art. 2 of Law 8.666/93), which, nonetheless, “reflects the application of the principle of publicity, to the extent that, in a transparent manner, the Administration communicate its objectives and allows interested parties from the private sector to respond to the extent of their interests” (Carvalho Filho, 2019). The procedure was designed to be simpler and faster, taking into consideration that smallholders’ participation in procurement procedures could be limited by tendering rules that establish bureaucratic systems (Nehring et al., 2017).

Moreover, support in the implementation of the different phases of the process is provided through model documents (Annexes to FNDE, 2020).

Under the PNAE legislation, a first set of rules that differentiate the two procedures concerns the determination of the reference price of foodstuffs. In the public call, this “should be determined by EEx based on market price research” (Art. 31 R.). It

must be the average price surveyed in at least three local markets, prioritising family farmers’ markets, when available, plus the inputs that are required in

the public call, such as freight, packaging and any other charge necessary for supplying the products.

(§1°)

“If it is impossible to survey the local level, this must be carried out or complemented at the level of the immediate, intermediate, state or national geographic regions, in this order” (§2°). This is the regional subdivision of Brazil adopted in 2017 by the Brazilian Institute of Geography and Statistics (IBGE), updated for public policy planning and management purposes taking into consideration recent social, demographic, economic and political changes. Several PNAE rules make reference to it (COSAN, 2020c).

Therefore, to establish a purchasing price that considers geographical differences and the specific reality of family farming, the law gives priority to proximity and family farmers’ markets and expressly provides an example of the additional charges that need to be added to the market price. A further provision that deserves attention defines that when it is impossible to survey prices for agroecological or organic products, the EEx may increase their prices up to 30% compared to conventional products (Art. 31 § 5). This provision, which is also contained in the PAA (Art. 4°, §1° Law 14.628 of 2023), recognises the existence of distinct markets for environmentally sustainable products and sets the extra cost margin that can be justified due to their positive attributes.

Moreover, “public meetings open to all interested parties, may be held before the launch of public calls, to collect information and clarify any doubts about the process for acquiring family farming products” (Art. 31 § 3). Although these preliminary market consultations are mentioned in relation to the purchase price, their scope seems to encompass any activity of market engagement to align demand and supply and broaden participation.

Finally, “the purchase prices defined by EEx must be indicated in the public call and must be the prices paid to family farmers, rural entrepreneurs and/or their organisations for the sale of the foodstuff” (Art. 31 § 4). Therefore, price would not be a criterion on which suppliers would compete. The abandonment of the lowest price as the main selection criterion for purchases of family farming products is one of the major features of this procedure (Schottz & Schmitt, 2021).

To promote broad participation in the public call, the publication and advertising must be also adapted to the specific audience. The publication must occur in different channels, such as official websites, posters in public places or newspapers and local radio, while the advertising must address local family farming organisations and public technical assistance and rural extension entities. The invitation must remain open for a minimum period of 20 calendar days (Art. 32 R.) and must contain a detailed description of the demanded food items, quantities and logistics of distribution and delivery (Schottz & Schmitt, 2021). Only the items listed in the call may be later accepted as variants, if necessary (Art. 33 R.).

The public call procedure is also subject to special rules regarding the qualification and selection of sales projects. Sale projects may be presented by both formal (associations and cooperatives) and informal groups of producers and individual

suppliers, which must provide the relevant documentation for qualification (Arts. 34, 36 R.).⁶

An important advance introduced by Resolution 6/2020 (Art. 35 R.) is the evaluation of sales projects based on two prioritisation categories: territorial and by characteristics of producers (CMAP, 2020). In fact, the project must be ranked from the lowest to the highest territorial level (following the IBGE Regional Division), giving priority to municipal-level production. Within each territorial level, priority must be given to land reform settlements, traditional indigenous communities and *quilombola* communities, then to suppliers of certified organic or agroecological food, and, in the third place, according to the level of organization of farmers, to formal groups, followed by informal groups and individual suppliers.

These rules deserve special attention. As the doctrine points out (Rezende et al., 2022), both the prioritisation criteria and the higher reference price for organic and agroecological products, are in accordance with the school feeding guidelines set by the Law, mainly “the use of healthy and adequate food”, “support to sustainable development” and “the right to school feeding”.

Moreover, being aligned with the country’s geographical panorama, the new model of prioritisation criteria allows for maintaining the relationship between local production and the school environment (COSAN, 2020c). Prioritising family farmers located closer to the municipality where the public call originates allows to strengthen local family farming, purchase fresher food, improve income generation for families and the local/regional economy, reduce the rural exodus, and facilitate the logistics of product delivery (COSAN, 2020c).

This is particularly important for indigenous and *quilombola* communities. In fact, matching the obligation to adapt school menus to the food culture of indigenous and *quilombola* communities (Art. 17, §3 R) with the preferential purchase of food products directly from these target populations is crucial to overcome structural barriers and guarantee their rights. Conversely, the non-acquisition of traditional foods for the consumption of these populations, often replaced by industrialised food that needs to be transported over long distances, not only prevent their access to culturally contextualised food, but is also associated with logistical and connected health, environmental and budgetary problems, such as irregular provision and low nutritional quality of meals (MPF, 2020). Giving these communities access to the school food market not only improves their food and nutritional security, but also enhances their traditional practices, which form part of Brazil’s cultural heritage (Art. 216 CFRB), as well as their role in preserving agrobiodiversity. In this regard, it is important to emphasise that according to the legislation, the food produced by traditional populations, similarly to that intended for household consumption, is exempt from registration, inspection and control. The adaptation of sanitary standards and practices to the production and marketing of food by traditional peoples and communities, including in the context of school feeding, is key to ensure their participation in public procurement procedures (MPF, 2020).

As pointed out by Swensson (2019), through the prioritisation of groups over individuals, the programme encourages producer organisations as a way to support smallholders’ compliance with the purchase requirements (such as quality and safety, volumes, regularity, market prices, tax regularisation), as well as their

structuring to gain access to other formal markets and to services (such as credit and technical assistance), inputs and information. On the administration side, this can reduce the transaction costs of dealing with many individual producers. The greater supply efficiency of structured farmer organisations (Nehring et al., 2017) could also explain the exception allowing EEx receiving funds above a certain annual threshold to accept proposals only from formal groups (Art. 37 R.).

The PNAE foresees an individual sale limit for each family farmer or rural family entrepreneur and their organisations (Art. 39 R.). This provision is intended to avoid excessive benefits for a family unit or specific organisation from the implementation of this public policy (AGU, 2023). Between 2015 and 2021, the limit was doubled from R\$ 20,000 to R\$ 40,000,⁷ taking into account the impact of accumulated inflation on production costs, which directly affects family farmers, as well as the understanding that providing healthy and adequate school meals involves supporting sustainable development, including the viability of family farming supply and the sustainability of the short chain model, which is a reference within the programme (Rezende et al., 2022).

After the sales projects are selected, the EEx is obliged to conclude the corresponding contracts, respecting the terms of the public call (Art. 38 R.).

It is worth noting that, in line with the understanding on purchases from family farmers under the PAA,

in exceptional situations in which the public call procedure is impractical, the adoption of other forms of direct contracting will be admitted, respecting all the restrictions established by the pertinent legislation, not being recommended the use of the electronic reverse auction with exclusive quotas for family farmers.
(AGU, 2021b)

As discussed in this section, the special rules established for the public call process show an effort to adapt it to the characteristics and capacities of family farming and other vulnerable groups, as well as to regional differences and local specificities. This makes it an appropriate tool to give effectiveness to the reservation scheme provided for by PNAE law and, more broadly, pursue multiple social and environmental objectives.

Sustainable public food procurement beyond the PNAE

Through progressive legislative reforms, sustainable public procurement has become an obligation under Brazilian law.⁸ In fact, since 2010 the promotion of sustainable national development has been an objective of public procurement (Art. 3 of Law 8.666/1993) and, under the new general Law 14.133/2021, it is both an objective (Art. 11) and a principle (Art. 5°), and is manifest in a number of provisions. According to the authoritative view,

the organs and entities of the public administration are required to adopt criteria and practices of social and environmental sustainability and accessibility in public procurement, in the phases of planning, selection of supplier,

contract execution, supervision. . . and the impossibility of their adoption should be justified by the competent authority in the records of the administrative process, with the indication of relevant fact and/or law grounds.

(AGU, 2021b)

Additionally, public procurement procedures must observe the National Micro and Small Enterprise Statute. This establishes a “favourable, differentiated and simplified treatment to micro and small businesses” in the area of public procurement (Brazil, 2006b). This is materialised through instruments such as preferential contracting in the event of a tie (Art. 44), reserved bidding for contracts under a certain value, mandatory subcontracting in service contracts, and, in supplies contracts, a reserved quota of the subject matter (Art. 48, I, II, III) (see also Art. 4 Law 14.133/2021; Arts. 36, 43, §7° Decree 10.024/2019).

Finally, of particular interest are the gender-related procurement requirements introduced in Law 14.133/2021 by Decree 11.430/2023). This included as a tie-breaker criterion “the development, by the bidder, of equity measures between women and men in the workplace” and the possibility of “requiring in the tender notice that a minimum percentage of the workforce responsible for executing the contract is composed of women who are victims of domestic violence” (respectively, Art. 60, III and Art. 25, §9, I Law 14.133/2021).

While it is not the aim of this study to analyse in detail the general provisions dealing with sustainability in public procurement, it has been shown that, both within and outside the PNAE regulatory framework, there are various strategies for incorporating sustainability considerations into public food procurement.

Conclusions

In Brazil, the National School Feeding Programme stands as a cross-cutting public policy oriented to (i) producers – supporting small-scale agriculture, the development and diversification of agroecological food production, access to markets and income generation for rural communities and vulnerable groups; (ii) markets – aiming at fair prices, shorter supply chains and efficient sales channels; (iii) consumers – improving food security, health and nutrition and encouraging healthy and sustainable eating habits.

The progressive construction of the PNAE legal and regulatory framework for public procurement has been instrumental for harmonising the rights to health, education, environment and social inclusion through school food purchase. Mechanisms such as the reservation scheme through a waiver of bidding, quality-based competition, mandatory food requirements and evaluation criteria prove crucial “to widen the range of development objectives that public entities can reach through public procurement, in a manner that is highly food-specific” (De Schutter et al., 2021). Recent positive reforms have shown a concern to adapt public food demand to the supply capacity of the market (e.g. preferential selection criteria) and also the recent change to provide greater transparency and better monitoring of the policy (e.g. the PNAE card).

In addition to the PNAE, a number of sustainable procurement provisions and mechanisms contained in the general public procurement legislation can also be used for food purchases.

Nonetheless, the wide uptake of sustainable public food procurement in Brazil still faces significant challenges. First, it is important to adjust PNAE funding for inflation and prioritise the areas with lower local revenue and the most socio-economically vulnerable students, given that almost half of the Brazilian municipalities rely entirely (or almost entirely) on PNAE resources to fund school feeding (CMAP, 2020). Additional challenges concern the adaptation of public administration practices to the reality of family farming. A fair purchase price and competition limited to quality and other sustainability aspects must be guaranteed, as well as the purchase of agreed products, timely payments, reasonable flexibility in the documentation required and in the application of penalties during contract performance (CMAP, 2020).

Municipalities' adherence to the reservation scheme has increased over the years. In 2017 half of all Brazilian municipalities met or exceeded the 30% quota and 86% of all municipalities purchased, to some extent, food from family farms (CMAP, 2020). Structural barriers still hinder the inclusion of family farmers in public procurement. This requires rural development measures to provide technical assistance and training to farmers, investments in the productive infrastructure, and adapting public food demand to local productive capacity, including through collaboration schemes between nutritionists and rural development agencies. There are also mechanisms for encouraging municipalities to observe the family farm purchasing rule (CMAP, 2020; Soares et al., 2021).

It is relevant to mention the “entrepreneurial mayor award” of the Brazilian agency providing support to SMEs (SEBRAE), which rewards projects to expand municipal procurement from local and regional urban and rural small businesses. This includes supporting the adaptation of bidding processes, building businesses' and farmers' capacity to supply to the public administration and training municipal public servants to prioritise the procurement of products and services from these suppliers (SEBRAE, 2021).

The lack of training for suppliers and public administration officials, as well as failures to disseminate information and ensure transparency, are major challenges commonly pointed out in relation to sustainable public procurement. This is reflected most seriously in the context of food procurement, where, despite very detailed regulations, the lack of complete and simplified guidance material for the different players involved hampers effective access to these public policies.

The use of public procurement for food systems transformation is gaining momentum around the world, and calls for closer attention to the connections between the legislative frameworks for public procurement and sustainable development. With this chapter, we hope to have contributed to broadening the discussion on the subject of sustainable public food procurement in Brazil and internationally.

Table 7.1 Abbreviations with Portuguese Wording and English Translation

<i>Abbreviation</i>	<i>Original title</i>	<i>Translation</i>
AGU	Advocacia-Geral da União	Attorney General of the Union
CAE	Conselho de Alimentação Escolar	School Meals Council
CFN	Conselho Federal de Nutricionistas	Federal Council of Nutritionists
CGU	Controladoria Geral da União	Office of the Comptroller General
CMAP	Conselho de Monitoramento e Avaliação de Políticas Públicas	Public Policy Monitoring and Evaluation Council
COEFA	Coordenação de Execução Financeira da Alimentação	Coordination of the Financial Execution of Food
COSAN	Coordenação de Segurança Alimentar e Nutricional	Coordination of Food and Nutritional Security
CRFB	Constituição da República Federativa do Brasil	Federal Constitution of Republic of Brazil
EEx	Entidade Executora	Executing Entity
FNDE	Fundo Nacional de Desenvolvimento da Educação	National Fund for the Development of Education
IBGE	Instituto Brasileiro de Geografia e Estatística	Brazilian Geography & Statistical Institute
MPF	Ministério público federal	Federal Prosecution Service
PAA	Programa de Aquisição de Alimentos	Food Purchase Programme
PNAE	Programa Nacional de Alimentação Escolar	National School Feeding Programme
PRONAF	Programa Nacional de Fortalecimento da Agricultura Familiar	National Program to Support Family Farming
RT	Nutricionista Responsável Técnico	Responsible Nutritionist
SEBRAE	Serviço Brasileiro de Apoio às Micro e Pequenas Empresas	Brazilian Micro and Small Business Support Service
TCU	Tribunal de Contas da União	Federal Audit Court
UEX	Unidade Executora	Executing Unit

Notes

- 1 The author is an early-stage researcher at the SAPIENS Network. This project has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 956696. The author would also like to thank the following experts for their valuable research inputs and feedback: Letícia Campos Baird (Bahia State Public Prosecutor), Felipe Jabali Marques and Anna Beatriz Savioli (Brazilian Lawyers and PhD students) and Felipe Vilaça Loureiro Santos (ESR fellow at the SAPIENS Network and PhD student).
- 2 The PAA's broad scope, consisting of several operating modalities with their own goals and rules, as well as its recent extinction and reintroduction by the Bolsonaro and Lula governments respectively, may justify its exclusion from the scope of this chapter. However, there is no doubt that with almost twenty years of history, the PAA has been a major advance for sustainability in Brazil and deserves special attention in public food procurement studies. See, among others, Souza de Almeida et al., 2020 (cited).

- 3 In Brazil, the executive branch is divided into three levels: federal, state and municipal, headed by the President at the federal level, governors at state level and mayors at municipal level.
- 4 At the beginning of 2023, after six years without correction, per capita funding was increased by 28–39% and the total programme's budget reached R\$5.5 billion (FNDE, 2023). At the time of writing (September 2023), this corresponded to approx. €1.03 billion and £896 million.
- 5 This is composed of representatives of government, education professionals and students, parents and civil society organisations.
- 6 For instance, all the applicants must hold a PRONAF Eligibility Declaration (DAP), certifying compliance with the requirements established by Law 11.326/2006 to classify as a 'family farmer' or 'rural family entrepreneur. An adaptation of the rules on DAP duration – increasing its validity from two to five years – was advocated to reduce potential administrative obstacles to farmers' participation in public calls (CMAP, 2020). Additionally, the applicants must submit a declaration that the food to be supplied is of their production (Art. 36 R.).
- 7 In September 2023, R\$40.000 were equivalent to approx. £6.500 and €7.500.
- 8 On the mandatory nature of sustainable public procurement in Brazil see, for all, the opinion of the National Sustainability Chamber (AGU, 2021a), and the National Guide for Sustainable Contracting by General Counsel of the Union (AGU, 2021b).

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