

# *Sustainable Public Procurement in the Sao Paulo State Government: An in-depth case study*

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*Martin Dietrich Brauch*

*July 2012*



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### Sustainable Public Procurement in the Sao Paulo State Government: An in-depth case study

July 2012

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## Table of Contents

Introduction.....	1
1.0 Political and Institutional Framework.....	3
1.1 The State Government in its Context.....	3
1.2 Concepts Underlying Sao Paulo’s SPP Policy .....	4
1.2.1 Sustainable Development.....	4
1.2.2 Government Responsibility.....	4
1.2.3 Sustainable Public Procurement.....	5
1.3 Development of the Sao Paulo SPP Policy.....	5
1.3.1 The Proposal to Develop an SPP Policy.....	5
1.3.2 The Temporary Working Group (2004) .....	6
1.3.3 The Permanent Working Group (2011).....	6
1.3.4 Key Government Areas Involved.....	7
1.4 SPP Policy Tools.....	7
1.5 Coordination of the SPP Policy.....	8
2.0 Legal Framework.....	9
2.1 National Norms on Public Procurement.....	9
2.1.1 Purposes of Public Procurement.....	9
2.1.2 Arguments Supporting SPP under Federal Law in the Legal Opinion of the Chief Environmental Attorney of the State of Sao Paulo.....	11
2.1.3 Five Original Modalities of Public Procurement .....	12
2.1.4 The Sixth Procurement Modality: Reverse auction.....	12
2.1.5 Principle of Equal Treatment and Incentives for Domestic Industry.....	13
2.1.6 Small and Medium Enterprises (SMEs).....	14
2.1.7 Administrative Sanctions .....	15
2.2 Sao Paulo State Norms on Public Procurement.....	16
2.2.1 Reverse Auction and Other Electronic Tools.....	16
2.2.2 Inversion of Phases.....	18
2.2.3 Small and Medium Enterprises (SMEs).....	19
2.2.4 Incentives for Domestic Industry.....	19
2.2.5 Administrative Sanctions.....	19

2.3 Norms on Sustainable Public Procurement.....	20
2.3.1 Norms Prior to the 2004 Working Group.....	20
2.3.2 The Socio-Environmental Label.....	21
2.3.3 Cadmadeira and Legal Timber Label.....	22
2.3.4 The SPP Program.....	22
2.3.5 The State Policy on Climate Change.....	23
3.0 The Program in Action.....	25
3.1 Identifying the Need to Purchase and Evaluating Risks.....	26
3.2 Developing Technical Specifications and Contracts.....	26
3.2.1 Goods.....	26
3.2.2 Services.....	30
3.2.3 Construction Works.....	38
3.3 Evaluating Proposals and Selecting the Supplier.....	39
3.3.1 Social and Environmental Sustainability.....	39
3.3.2 Economic Sustainability.....	40
3.3.3 Advantages of the Reverse Auction.....	40
3.4 Managing Suppliers and Contracts.....	41
4.0 Education and Awareness.....	44
5.0 Lessons Learned: Improvement and expansion.....	47
5.1 Accountability.....	48
5.2 Specifications of Goods.....	49
5.3 Specifications of Services.....	50
5.4 Specifications of Construction Works.....	50
5.5 Socio-Environmental Responsibility of Suppliers.....	51
5.6 Contract Monitoring and Management.....	51
5.7 Information Exchange and Dissemination.....	52
References.....	54

## List of Acronyms and Abbreviations

BEC/SP	Electronic Procurement Exchange of the Sao Paulo State Government
BRL	Brazilian Reals
Cadfor	Registry of Suppliers
Cadmadeira	State registry of legal entities dealing in forest products and subproducts of Brazilian native flora in the State of Sao Paulo
Cadmat	Registry of Goods and Services
Cadterc	Registry of Services
Caufesp	Unified Registry of Suppliers
Cerflor	Brazilian Forest Certification Program
Cetesb	Environmental Sanitation Technology Company
CICPS	Internal Commissions on Sustainable Public Procurement (SPP Commissions)
CLAD	Latin American Center of Administration for Development
CNPJ	Brazil's National Registry of Legal Entities
CPF	Brazil's National Registry of Natural Persons
CQGP	Public Management Quality Committee
DEFRA	United Kingdom Department for Environment, Food and Rural Affairs
EC	European Commission
EU	European Union
FSC	Forest Stewardship Council
Fundap	Administrative Development Foundation
Gati	Group of Technical Support to Innovation
GDP	Gross Domestic Product
GRI	Global Reporting Initiative
Ibama	Brazilian Institute of Environment and Renewable Natural Resources
ICMS	Tax on the Circulation of Goods and Services (Value-Added Tax)
IISD	International Institute for Sustainable Development
Inmetro	Brazil's National Institute of Metrology, Standardization, and Industrial Quality
ISO	International Organization for Standardization
Mercosur	Southern Common Market
MTF-SPP	Marrakech Task Force on Sustainable Public Procurement
OECD	Organisation for Economic Co-operation and Development

PECPS	Sustainable Public Procurement Program of the State of Sao Paulo (SPP Program)
PEMC	Sao Paulo State Policy on Climate Change
PNMC	Brazil's National Policy on Climate Change
Procel	Brazil's National Program of Electricity
Pubnet	System for publication in the Official Gazette of the State of Sao Paulo
Sabesp	Basic Sanitation Company of the State of Sao Paulo
SGP	Public Management Secretariat
Siaffisico	Integrated System of Physical and Financial Information
SME	Small and Medium Enterprises
SPP Commissions	Internal Commissions on Sustainable Public Procurement (CICPS)
SPP Program	Sustainable Public Procurement Program of the State of Sao Paulo
SSRH	Sanitation and Water Resources Secretariat
State Government	Sao Paulo State Government
TCE/SP	Court of Audit of the State of Sao Paulo
TERI	The Energy and Resources Institute
UNEP	United Nations Environment Programme
Unesp	Sao Paulo State University "Júlio de Mesquita Filho"
VLC	Virtual Learning Community
WG	Working Group

## Introduction

Governments are highly influential consumers. Their purchasing decisions can affect the decisions made by firms regarding the quality of their goods and services, as well as the decisions made by other consumers. Public procurement can therefore be a powerful driver of sustainability, by providing incentives for investment, innovation, and scaling of sustainable enterprises, goods, services, and infrastructure across the public and private sectors.

Public procurement refers to the processes used by governments for the contracting of goods, services, and works, usually by competitive tendering or bidding (Perera, Chowdhury & Goswami, 2007, pp. 15-16). Procurement procedures generally include the following phases: identifying the need; evaluating risks; defining the object of contracting; developing technical specifications and contractual parameters; selecting the tenderer or the proposal; and managing the supplier and the contract (European Commission, 2011, p. 18; MTF-SPP, 2011, Session 5, slide 2).

Sustainable public procurement (SPP) or “green” procurement refers to the inclusion of environmental, economic, and social criteria in public procurement. SPP programs are the laws, policies, and practices that integrate sustainability into public procurement (Perera, Chowdhury & Goswami, 2007, p. 15). They should ideally include sustainability criteria in each procurement phase.

Several international initiatives promote and support the implementation of SPP programs:

- The Marrakech Task Force (MTF) developed the MTF Approach to SPP. Switzerland and the United Nations Environment Programme (UNEP) designed a project entitled “Capacity building for Sustainable Public Procurement in Developing Countries,” aimed at implementing the MTF Approach on SPP in 14 countries, with support from the European Commission, the Swiss Government, and the Organization of Francophone Countries. Pilot countries are Chile, Colombia, Costa Rica, Lebanon, Mauritius, Tunisia, and Uruguay (UNEP, 2011, p. 2).
- The Organisation for Economic Co-operation and Development (OECD) developed policy reviews on SPP programs and initiatives in OECD member countries, an analysis of institutional factors facilitating or hindering their success, and work on the links between SPP and other aspects of public policy (environmental policy, public expenditure management, trade law, and competition policy). The OECD Council also issued the “Recommendation on Improving the Environmental Performance of Public Procurement” (Organisation for Economic Co-operation and Development [OECD], 2012).
- The European Commission’s (EC’s) Communication “Public Procurement for a Better Environment” (COM(2008)400) provides “guidance on how to reduce the environmental impact caused by public sector consumption and how to use sustainable public procurement to stimulate innovation in environmental technologies, products and services” (European Commission, 2012). The EC also developed a handbook to help governments plan and implement SPP programs, explaining the possibilities offered by European Union (EU) Law, looking at approaches to greening contracts, and giving examples of SPP across the EU (European Commission, 2011, p. 4).

Developed countries have taken the lead in implementing SPP programs. According to the survey by Perera, Chowdhury, and Goswami (2007, p. 6), most national SPP programs are in place in OECD member states, including Australia, Canada, the European Union, Japan, New Zealand, and the United States. Other developed countries that

have developed and implemented national SPP programs are Belgium, Ireland, Norway, and the United Kingdom (Kingdom of Belgium, 2012; Republic of Ireland, 2012; Norwegian Ministry of the Environment; Norwegian Ministry of Children and Equality; & Norwegian Ministry of Government Administration and Reform, 2007; United Kingdom Department for Environment, Food and Rural Affairs (DEFRA), 2012).

Nonetheless, a growing number of developing and emerging countries are designing and implementing SPP programs, often in partnership with international development organizations and research institutes. As part of its research on SPP, the International Institute for Sustainable Development (IISD) has studied initiatives and supported policymakers in Chile (Weller, Claro & Blanco, 2008), India (The Energy and Resources Institute (TERI), 2008), South Africa (Hanks, Davies & Perera, 2008), and Vietnam (Hoang, Do & Perera, 2009).

In this context, IISD turned with interest to the experience of the Government of the State of Sao Paulo, Brazil (the State Government). The State Government is in a privileged position to promote sustainable development by means of public procurement:

1. The land area of Sao Paulo State compares to that of the United Kingdom; its population, to that of Argentina; its Gross Domestic Product (GDP), to that of Poland. Sao Paulo represents roughly one-third of the GDP and of the exports of Brazil, the 6th largest economy by nominal GDP.
2. The State Government has an annual procurement budget of about USD12 billion for the purchase of goods, services and construction works.
3. Since the mid-1990s, the State Government has improved procurement efficiency, and has implemented procurement mechanisms aimed at promoting sustainability by means of its SPP Program.

The State Government has made significant strides in integrating sustainability into its public procurement processes, and, as such, serves as an important role model on how to use procurement to promote sustainable development. The present case study documents in detail the initiation and expansion of the Sao Paulo SPP program; explains how its promoters overcame legal, institutional, administrative, market and mindset hurdles at each stage; and assesses the legal, administrative and procedural improvements needed to expand the program further. This in-depth account of the Sao Paulo State experience can prove particularly useful to developing countries and subnational governments implementing or planning to implement SPP policies.

The study is structured as follows. Section 1 presents the political and institutional framework that led to the creation of Sao Paulo's policies on SPP. Section 2 outlines the legal framework that consolidated and structured these policies into the Sao Paulo State SPP Program. Section 3 analyzes how the SPP Program promotes sustainability in all phases of procurement. Section 4 discusses the education and awareness tools that the State Government has used to train procurers and other government officials on SPP (Section 4). Finally, Section 5 reviews the lessons learned, identifying both challenges and opportunities to improve the SPP Program internally and to make its successes a model exportable to other Brazilian states and to other developing countries.

## 1.0 Political and Institutional Framework

### TEXT BOX 1: POLITICAL AND INSTITUTIONAL FRAMEWORK

The State of Sao Paulo is of great significance to the Brazilian economy in terms of its geographic, economic, social, and demographic indicators. With an annual procurement budget of approximately USD12 billion for the purchase of goods, services, and constructions works, the Sao Paulo State is a major consumer. Since the mid-1990s, the State Government has implemented measures to modernize and rationalize government spending.

Intensive use of information and communication technology in internal processes and external transactions led to the modernization of public management in the State of Sao Paulo. This context enabled the State to establish a comprehensive supply policy that actively promotes sustainable development.

*Source: Sao Paulo State Government*

The sustainable public procurement and contracting (SPP) program that is the object of this case study was developed in the unique economic and financial context of the State of Sao Paulo (Brazil) and of its government structure. In addition, it must be considered as an extension of the policies adopted by the Sao Paulo State Government (the State Government) from 1995 onwards to improve efficiency and transparency in government management, particularly regarding the procurement of goods, services, and construction works. This section presents describes the principles that guide the inclusion of sustainability criteria in the State Government and their political-institutional history.

### 1.1 The State Government in its Context

The State of Sao Paulo is a major contributor to the Brazilian economy, and rivals many countries in terms of its size and output (see Table 1). Accounting for a third of Brazil's GDP and exports, and for more than one-fifth of the country's population, the State of Sao Paulo has skilled workers, good energy supplies, and transportation and telecommunication infrastructure (D'Amico, 2010, p. 4).

**TABLE 1. THE STATE OF SAO PAULO IN COMPARISON WITH BRAZIL AND OTHER COUNTRIES**

	SAO PAULO	COMPARABLE COUNTRY	BRAZIL	SAO PAULO IN COMPARISON TO BRAZIL
Area (km <sup>2</sup> )	248,808.8	United Kingdom (243,610)	8,514,876	2.9 per cent
Population (2010)	41,252,160	Argentina (40,091,359)	190,732,694	21.6 per cent
GDP (2008, current Brazilian Reals)	1 trillion (2008)	Poland (BRL962 billion, 2008)	BRL3 trillion (2008)	33.2 per cent
GDP per capita (current Brazilian Reals)	BRL24,000 (2008)	Saudi Arabia (2009)	BRL16,000 (2008)	150.0 per cent
Exports (2008, USD, FOB)	USD65 billion	Chile (USD66.4 billion)	USD198 billion	32.8 per cent
Human Development Index (HDI) (2005)	0.833	Latvia (0.836)	0.792	105.2 per cent

Sources: World Bank, Sao Paulo State Government, Brazilian Institute of Geography and Statistics, Institute for Applied Economic Research, World Trade Organization, United Nations Development Program.

The State Government has an administrative apparatus that corresponds to the economic power of the state, with 26 secretariats, in addition to public foundations, government agencies, public companies, and mixed-capital companies, with over 700,000 public servants and employees (D'Amico & Agune, 2007, p. 1). The State's approved 2011 budget amounts to BRL140.7 billion (approx. USD86 billion) (Secretaria de Planejamento e Desenvolvimento Regional do Estado de São Paulo, 2011). Thus, the State Government is a major consumer. Its more than 1800 procuring units deploy a total of approximately BRL20 billion (approx. USD12 billion) every year in the procurement of goods, services, and construction works (D'Amico, 2010, p. 5; Ferragino & D'Amico, 2009, p. 1).

During the Mario Covas (1995-2001) and Geraldo Alckmin (2001-06) administrations, the State Government put forth a set of measures to restructure the State's finances and to achieve fiscal equilibrium through regaining income and controlling public expenditure. In the years 1995 and 1996, the government eliminated a budget deficit that amounted to 21.7 per cent of the total state revenue in 1994 (Ferragino & D'Amico, 2009, p. 1-2).

In addition, the Covas and Alckmin administrations implemented measures to modernize the management of public resources and to make it more efficient and rational, mainly through the development of management tools and systems. Based on the intensive use of information technology, these tools made it possible to create databases and to implement new management practices, in order to integrate and to better control the procurement systems of the State Government entities (D'Amico, 2010, p. 5; Ferragino & D'Amico, 2009, pp. 1-2).

These and other innovative changes in the public administration of the State Government, while promoting an increase in efficiency and transparency in procurement, saved resources and reduced corruption. In addition, these modernizing reforms enabled the implementation, from 2004 onwards, of the policy of using the State's purchasing power as an instrument to promote sustainable development (D'Amico & Agune, 2007, p. 2; Ferragino & D'Amico, 2009, p. 1).

## 1.2 Concepts Underlying Sao Paulo's SPP Policy

The State Government structured its SPP policy based on the concepts of sustainable development and on the internationally recognized responsibility of the government to promote sustainability through government purchases (D'Amico, 2010, p. 5; D'Amico & Agune, 2007, p. 1).

### 1.2.1 Sustainable Development

Sustainable development encompasses environmental protection allied with the promotion of social welfare and economic growth. It is a principle aimed at satisfying the needs of present generations without compromising the capacity of future generations to meet their own, according to the well-known definition of the 1987 Report by the Brundtland Commission. It was established by the Rio Declaration on Environment and Development, of 1992, and by the Johannesburg Declaration on Sustainable Development, of 2002, as well as by several international treaties and conventions. The principle of sustainable development guides the policies and actions of the State Government; in particular, it is fundamental to its SPP policy (D'Amico, 2010, p. 21; D'Amico & Agune, 2007, p. 1).

### 1.2.2 Government Responsibility

The role of public procurement as an instrument to stimulate sustainable patterns of production, trade, and consumption is recognized in many international documents (Agenda 21, the Implementation Plan adopted in the 2002 Johannesburg Conference, treaties and conventions, among others) and in national and subnational policies (in England, Japan, Norway, and other countries) (D'Amico & Agune, 2007, pp. 6-7).

In addition, there is the Marrakech Task Force on Sustainable Public Procurement (MTF-SPP), an initiative in which the State Government is involved. It is a voluntary and cooperative task force, under the auspices of the United Nations, which discusses policies and electronic tools for SPP in developing and developed countries (D'Amico & Agune, 2007, p. 2; United Nations Environment Programme (UNEP), 2011).

Under Brazilian law, government purchases must follow an administrative procedure of public procurement (*licitação*), in order to ensure legality, equality, transparency, and competition, as well as to select the most advantageous proposal (Law No. 8666, art. 3; D'Amico & Agune, 2007, p. 8). By including technical specifications regarding the sustainability features of goods, services, and construction works to be procured, the State Government serves better the public good, and has an opportunity to promote sustainable development by means of its purchasing power.

### 1.2.3 Sustainable Public Procurement

According to Ferragino and D'Amico (2009, p. 6), the definition of SPP adopted by the State Government is inspired by the U.K. Sustainable Procurement Task Force in June 2006 (DEFRA, 2006, p. 10):

Sustainable Procurement is a process whereby organizations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organization, but also to society and the economy, while minimizing damage to the environment.

In particular, the aspects considered by the State Government in implementing the action plan for developing the SPP policy include the following (D'Amico & Agune, 2007, p. 10; Decree No. 50,170, arts. 1-2; Decree No. 55,947, art. 31, item I):

- Water and energy consumption
- Emission of pollutants
- Generation of waste
- Toxicity in goods and inputs
- Durability
- Incentive to social policies
- Enhancement of transparency in management
- Adoption of technologies with lower greenhouse gas emissions than conventional ones

## 1.3 Development of the Sao Paulo SPP Policy

This chronological account of the development of the Sao Paulo SPP policy follows the description proposed by D'Amico and Agune (2007, pp. 8-9).

### 1.3.1 The Proposal to Develop an SPP Policy

The Public Management Quality Committee (Comitê de Qualidade da Gestão Pública—CQGP) of the State Government, as one of its responsibilities, formulates and proposes to the State Governor policies to enhance the efficiency of the State Government entities. Its proposals include policies regarding information technology tools, training of public servants, supply, procurement, and outsourcing (D'Amico & Agune, 2007, p. 8).

In 2004, the CQGP, formed by the Office of the Chief of Staff, the Treasury and Planning Secretariat, and the Office of the State Attorney General, received a formal request from the Environment Secretariat for a feasibility study on the development of an SPP policy. In response to this request, the CQGP institutionalized the State Government's SPP policy by means of a Resolution (Resolution CC-53/04). The resolution provided (Resolution CC-53/04, arts. 1-2):

There is hereby established, within the Public Management Quality Committee, a Working Group to conduct studies, and to provide technical and legal advice in the environmental field, aiming at the inclusion of environmental criteria compatible with the socio-environmental policies of the Sao Paulo State Government, especially in the actions resulting from the working subgroups [...] responsible for expanding the electronic systems for the procurement of goods and services.

The Working Group shall have the mandate to propose guidelines, rules, and procedures aimed at promoting the adoption of environmental sustainability in the procurement of common goods and services, as well as in the execution of construction works and engineering services. (Translation by author)

### 1.3.2 The Temporary Working Group (2004)

The Working Group (WG) established by Resolution CC-53/04 (WG-2004) was temporary and had its mandate detailed in the resolution. Its members, selected by the Chief of Staff, represented the Office of the Chief of Staff (general coordination); the Environment Secretariat (technical coordination); the Economy and Planning Secretariat; the Treasury Secretariat; the Energy, Water Resources, and Sanitation Secretariat; the Office of the State Attorney General; the Basic Sanitation Company of Sao Paulo State (Sabesp); and the Environmental Sanitation Technology Company (Cetesb) (Resolution CC-53/04, art. 3; art. 3, para. 1). In addition, the resolution allowed specialists to be invited to participate (without a vote) in WG-2004 meetings (Resolution CC-53/04, art. 3, para. 2), and authorized the formation of working subgroups and requests for the involvement of professionals from other state government entities (Resolution CC-53/04, art. 4).

Thus, the WG-2004 promoted the participation of government agents from multiple areas and levels, including those involved with procurement and specialists in environmental sciences and law. Three working subgroups were created to deal with the three main areas of procurement: (1) General Services; (2) Goods; and (3) Construction Works and Engineering Services. The WG-2004 and each of its subgroups involved about 40 professionals, representing several entities in the State Government, and articulating public foundations, government agencies, public companies, and mixed-capital companies.

### 1.3.3 The Permanent Working Group (2011)

Joint Resolution No. 1/11 of the Secretariats of Public Management, Treasury, Environment, and Sanitation and Water Resources institutes a permanent Working Group (WG-2011) with the general objective of coordinating the activities of the Program and stimulating actions for its continuous development (Joint Resolution SGP/SF/SMA/SSRH No. 1). The specific objectives of the WG-2011 are (Joint Resolution SGP/SF/SMA/SSRH No. 1, art. 1) (translation by author):

- to propose guidelines, rules, and procedures aimed at promoting the adoption of socio-environmental criteria in procurement;
- to articulate the state government entities, seeking a complete harmonization of the socio-environmental criteria adopted;

- *to prepare a detailed report of the actions and programs developed within the state government entities; and*
- *to carry out studies aiming at introducing socio-environmental criteria in procurement.*

The WG-2011 is formed by representatives of the State Secretariats of Public Management (coordinator of the working group), Environment, Treasury, and Sanitation and Water Resources; these representatives are indicated by the respective State Secretaries and appointed by the State Secretary of Public Management (Joint Resolution SGP/SF/SMA/SSRH No. 1, art. 2). The resolution authorizes the WG to form working subgroups and to invite to its meetings any persons with knowledge and experience relevant and useful to its activities (Joint Resolution SGP/SF/SMA/SSRH No. 1, art. 3).

### 1.3.4 Key Government Areas Involved

The Sanitation and Water Resources Secretariat, which originally was not part of the group of government entities involved in the Program, was included in 2011, even before the formalization of its involvement through the creation of the WG. This secretariat started to have an important role in the Program due to the involvement of its Secretary and Deputy Secretary in the process of design and legislative approval of the Sao Paulo State Policy on Climate Change, which encompasses SPP, among other initiatives. In addition, the Sanitation and Water Resources Secretariat is of strategic importance because of its link with Sabesp, which has high levels of procurement and advanced procurement systems with sustainability aspects (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011; see Text Box 6 on Sabesp in section 3.4).

The Office of the State Attorney General also played an important part in the development of the SPP policy, particularly through the Chief Environmental Attorney, Sílvia Helena Nascimento. Attorney Nascimento contends that Federal Public Procurement Law prohibitions against anti-competitiveness do not hinder the adoption of an SPP policy; furthermore, she maintains that public procurement must follow the principles of environmental preservation and of reduction of social and regional inequalities (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011). Based on a legal opinion issued by her, the Office of the Chief of Staff affirmed that the electronic systems for the procurement of goods and services developed by the State Government created a favourable environment for implementing an innovative SPP policy (D'Amico & Agune, 2007, p. 9).

The political and institutional arrangements and the combination of knowledge and experience accorded legitimacy to the SPP policy since its design and development. At the root of the success of the policy is the inclusive way it was designed, not through top-down decrees issued by the Executive Branch, but through a process that valued the opinions of public servants and the participation of several state government entities.

## 1.4 SPP Policy Tools

Starting from the work developed by the WG-2004, the State Government's SPP policy, which is pioneering in Brazil, became progressively structured. In addition to the measures aimed at reducing environmental impacts, the policy aims at using the state's purchasing power as a tool to promote regional development, non-discrimination, inclusion of the disadvantaged, small and medium enterprises (SMEs), entrepreneurship, public health, and management efficiency (D'Amico & Agune, 2007, pp. 16-17, 19).

The tools developed under this policy, which will be described in more detail in the following sections, include (Ferragino & D'Amico, 2009, pp. 1, 6; D'Amico, 2010, pp. 8, 10; Comitê de Qualidade e Gestão Pública do Estado de São Paulo (CQGP), n.d.).

- Creation of the Socio-Environmental Label (2005);
- Inclusion of socio-environmental criteria in the Registry of Goods and Services (Cadmat), available in the Electronic Procurement Exchange of the Sao Paulo State Government (BEC/SP), and in the Registry of Services (Cadterc);
- Institution of the Sustainable Public Procurement Program of the State of Sao Paulo (*Programa Estadual de Contratações Públicas Sustentáveis*—PECPS, referred to as SPP Program) and of Internal Commissions on Sustainable Public Procurement (*Comissões Internas de Contratações Públicas Sustentáveis*—CICPS, referred to as SPP Commissions), to internalize the Program in every state government entity (2008);
- Institution of a mandatory Annual Report for the accountability of each government entity involved in the Program, following a template based on methodological guidance from the Global Reporting Initiative (GRI), ensuring transparency, consistency, and comparability in the monitoring of results;
- Creation of the SPP website of the State of Sao Paulo ([www.comprassustentaveis.net](http://www.comprassustentaveis.net)) in order to promote interaction among the SPP Commissions in implementing the Program; and
- Training of public servants and of the SPP Commission members through a distance-learning platform on the Sao Paulo State SPP website (2,600 seats offered in 2009).

## 1.5 Coordination of the SPP Policy

The coordination of the Program is currently centralized in the Public Management Secretariat, through its Group of Technical Support to Innovation (*Grupo de Apoio Técnico à Inovação*—Gati). The technical coordination lies with the Environment Secretariat, and the operational coordination lies with the Treasury Secretariat, which, as it deals with the financial aspects of public procurement, has significant political power (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

State Government officials responsible for developing the SPP Policy stressed the importance of solid structuring of the supply macro-policy, based on appropriate management technologies and tools that can ensure efficiency, promptness, control, and transparency. Also important is that the program leader has political support from the highest levels of government. The person responsible for the supply policy is, in their opinion, the most desirable agent to serve as program coordinator, with the technical support of those in the legal, environmental, finance, development, and large purchasers areas, among others (C. Bonfiglioli, University of Sao Paulo, & V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communications, May 31, 2011).

## 2.0 Legal Framework

Under the Brazilian Federal Constitution, only the Federal Union has the competence to institute general norms of national scope on public procurement. The detailed regulation of these matters lies with each of the federative entities (Federal Union, States, Municipalities, and the Federal District), each of them within the limits of their legislative competence (Federal Constitution, art. 22, item XXVII). The Public Procurement Law establishes, for all federative entities, general public procurement norms for construction works, services, purchases, sales, and leases (Law No. 8666). State Law No. 6544 (as amended) governs procurement within the State of Sao Paulo (Law No. 6544).

To provide a complete understanding of the legal regime of public procurement in the State of Sao Paulo, this section starts with an analysis of national and state norms on public procurement in general, and in the light of the principle of sustainable development. It then presents the Sao Paulo State norms on procurement, including those dealing with sustainability considerations.<sup>1</sup>

### 2.1 National Norms on Public Procurement

As a rule, contracts between a public entity and a private entity must be preceded by a procurement procedure, guaranteeing, among others, the principles of equality, impersonality, morality, publicity, and administrative probity. The administrative procedure established under the Public Procurement Law is a subjective public right of the tenderers, guaranteeing a type of “due process of tendering” (Law No. 8666, arts. 1-4). The Public Procurement Law also lists the hypotheses of exclusions and exemptions from tendering (Law No. 8666, art. 24). This section analyzes the set of national norms relevant to public procurement, taking into account the principle of sustainable development and its elevation to public policy in the Brazilian legal system.

#### 2.1.1 Purposes of Public Procurement

According to the Public Procurement Law, following a procurement procedure before entering into a public contract serves three purposes (Law No. 8666, art. 3):

- (1) Guaranteeing the observance of the **principle of equal treatment**. According to this principle, suppliers and service providers in equal conditions must have the same opportunities and equal treatment when competing for the supply of goods or the rendering of services or construction works for public entities.

The content of this principle is specified by the provision that prohibits, in procurement procedures, “clauses or conditions that compromise, restrict, or frustrate competitiveness, and establish preferences or distinctions based on [...] circumstances that do not pertain or are irrelevant to the specific object of the contract” (translation by author) (Law No. 8666, art. 3, para. 1, item I). In fact, this legal provision is often indicated by agents involved in procurement processes as being a barrier to an SPP policy. However, interpreting this provision, State Attorney Sílvia Nascimento concludes that the law allows differential treatment, provided that it maintains the conditions of competitiveness and is established based on pertinent and relevant circumstances, to the benefit of the public interest (Legal Opinion CJ/SMA No. 683/2006).

<sup>1</sup> In this text, norm is understood as any generally applicable act of legal content issued by the Legislative or Executive branches of government, including laws, decrees, and resolutions.

Understood in this light, the inclusion of sustainability criteria in public procurement does not imply a violation of the principle of equal treatment. Companies and products with different levels of environmental quality cannot be said to be competing on equal terms, since the sustainability of processes and production methods, and of the products themselves, renders them different from competitors that do not reflect sustainability criteria. In this sense, one of the principles of the Brazilian economic order, as expressed in the Constitution, is “environmental protection, including through differential treatment according to the environmental impact of products and services and of their production and provision processes” (translation by author) (Federal Constitution, art. 170, item VI). Where there is a factual difference among the products or services, differential legal treatment is justifiable.

(2) Selecting the **most advantageous proposal** for the public entities. This purpose is commonly interpreted as being geared towards the economic aspect of procurement. According to a prominent legal commentator, the most advantageous proposal allows public entities “to enter into the best contract possible: to obtain the best quality, paying the lowest price” (translation by author) (Justen Filho, 2010, p. 65).

Proposals that take into account sustainability criteria may meet the most-advantageous-proposal criterion, based on both the price and the quality of goods, services, and construction works procured. Even if the sustainable purchase has a higher initial cost, its total cost may be lower than that of the non-sustainable purchase, considering the life-cycle costs of goods and services. In addition, the sustainable purchase can be considered to have higher quality, considering that it reduces environmental damages or even generates environmental benefits.

According to the Brazilian Constitution, the people and public entities must defend and preserve the ecologically balanced environment for present and future generations. This evidences that environmental sustainability is in the public interest (Federal Constitution, art. 225; art. 170, item VI). The activities of public entities, including with respect to procurement, must comply with constitutional norms and serve the public interest in the best way possible. Therefore, by interpreting the most-advantageous-proposal criterion with a broader look, emphasizing the economic aspect as well as the sustainability aspect, SPP can be justified as appropriate and recommended, as it promotes compliance with the Constitution and safeguards the public interest (Biderman et al., 2007, p. 35).

(3) Promoting **national sustainable development**. This purpose was included in the Public Procurement Law by Provisional Measure No. 495/10, through the term “*desenvolvimento nacional*”—“national development” (Provisional Measure No. 495). The Provisional Measure was later converted into Federal Law No. 12,349/10, which added the word “*sustentável*” at the end of the term: “*desenvolvimento nacional sustentável*”—“national sustainable development” (Law No. 12,349). The inclusion of this purpose in the legal text evidences that the purchasing power of the state must serve as a public policy aiming at “guaranteeing national development,” one of the fundamental objectives of the Brazilian Republic (translation by author) (Federal Constitution, art. 3). This concerns the social or extra-economic function of public procurement, which must not only meet the immediate needs of the public entities, but also incentivize socially desirable activities and, ultimately, promote development (Justen Filho, 2010, p. 12).

Other national norms signal the extra-economic function of public procurement in the field of sustainable development. One of them is Federal Law No. 12,187/98, which creates the National Policy on Climate Change (PNMC). The general objective of the PNMC is to reduce anthropogenic emissions of the greenhouse gases, reconciling sustainable development with the protection of the climate system (Law No. 12,187). In this sense,

Brazil has committed to adopt, “as a voluntary national commitment, actions of mitigation of greenhouse gas emissions, with a view to reducing between 36.1 [...] per cent and 38.9 [...] per cent its projected emissions until 2020” (translation by author) (Law No. 12,187, art. 12).

The PNMC is concerned with maintaining and promoting sustainable production and consumption patterns (Law No. 12,187, art. 5, item XIII, sub-item b). Towards this end, the PNMC includes a call for “the establishment of preferential criteria in public procurement and competitive tenders [...] for the proposals that provide greater savings of energy, water, and other natural resources, and reduction in the emission of greenhouse gases and in the generation of waste” (translation by author) (Law No. 12,187, art. 6, item XII). These legal provisions reinforce the possibility of using the state’s purchasing power as an instrument to support public policies aiming at promoting sustainable development.

### 2.1.2 Arguments Supporting SPP under Federal Law in the Legal Opinion of the Chief Environmental Attorney of the State of Sao Paulo

The SPP Policy faced opposition from parts of the State Government, based on the understanding that including sustainability criteria in procurement would make it more expensive and, thus, corrupt its essence—namely, obtaining “value for money.” That resistance prompted the Chief Environmental Attorney to issue an opinion defending the legality of the policy. In an interview, the Chief Environmental Attorney outlined three reasons for defending the policy (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011):

1. The concerns about the **legal feasibility** of the SPP policy relate to matters of cost and competitiveness. While the cost of SPP could be higher in the short term, taking into account social and environmental sustainability could lead to mid- to long-term savings. The obligation of the State is to pay the lowest price for the products it purchases while also considering social and environmental sustainability. The State Attorney maintains that it is possible to give preference to sustainable goods without harming competitiveness.
2. SPP is also **desirable as a public policy**. One example cited by State Attorney Nascimento is that of asbestos. At the start of the implementation of the SPP policy, a state law that prohibited the trade in asbestos in the State of Sao Paulo was declared unconstitutional. However, even though the State may not prohibit the trade in the product, neither is the State obligated to acquire it. “In the role of large purchaser and inducer in the economy, the State should encourage the purchase of sustainable goods, promoting their inclusion in the market, the drop of prices, and competitiveness,” affirms the State Attorney (translation by author).
3. Finally, SPP can be understood as a **constitutional obligation**, based on an interpretation of legal texts in accordance with the constitutional principles explained above.

Thus, based on a systematic interpretation of the purposes of procurement, and in the light of the constitutional norms and of the national guidelines regarding environmental protection (Federal Constitution, art. 170, item VI; art. 225; Law No. 6,938), the Chief Environmental Attorney’s legal opinion justifies and recommends the use of public procurement and contracting to promote sustainable development (Legal Opinion CJ/SMA No. 683/2006, paras. 34-36):

[...] the law mandates public entities to promote sustainable development, in which development must occur along with respect to the environment and to the social issues; this duty is inserted in the public interest to be reached compulsorily. As a consequence, public procurement and contracting, through tendering or directly (in the hypotheses of exclusion and exemption from tendering), must be guided toward sustainable consumption, based on what is provided for in the Constitution, the National Policy on the Environment, and the Public Procurement Law itself. This is a power and a duty, which the government must not fail to perform, as already mentioned. (Translation by author)

According to the Chief Environmental Attorney, the main instruments for the use of public procurement to promote sustainable development are the inclusion of sustainability requirements in technical specifications, as well as the application of the administrative sanction involving restriction of rights provided for in the Law on Environmental Crimes (Law No. 9605, art. 72, para. 8, item V), prohibiting violators of the environmental legislation from contracting with public entities for three years (Biderman et al., 2007, pp. 36-37).

### 2.1.3 Five Original Modalities of Public Procurement

The Public Procurement Law originally defined five procurement modalities (Law No. 8666, art. 22, paras. 1-5, 8):

1. Competitive bidding (*concorrência*)—suppliers and service providers interested in participating in the tender must prove, in the preliminary qualification phase, that they fulfill the minimum qualification requirements.
2. Request for quotations (*tomada de preços*)—participation is restricted to those previously included in a registry or meeting the registration requirements up to the third day before the deadline for receiving proposals.
3. Invitation (*convite*)—the public entity chooses and invites at least three suppliers or service providers, depending on the object of the tender, and publically extends the invitation to all the others registered in the same specialty.
4. Public contest (*concurso*)—used to select technical, scientific, or artistic works.
5. Auction (*leilão*)—a procedure of little interest for this case study, as auctions are not used by public entities to procure goods, but to sell them.

### 2.1.4 The Sixth Procurement Modality: Reverse auction

Although the legislator intended that the original list of modalities in the Public Procurement Law were exhaustive (Law No. 8666, art. 22, para. 8), Provisional Measure No. 2026/2000 created a sixth and decisively innovative modality: the reverse auction (Provisional Measure No. 2026). After several re-enactments, the Provisional Measure that created the reverse auction was converted into Federal Law No. 10,520/02 (Reverse Auction Law). The Provisional Measures restricted the use of the reverse auction to federal public entities (within the Federal Union), which led to strong criticism in the legal literature. With the Reverse Auction Law the modality was extended to States, Municipalities, and the Federal District (Bonafé, 2006, p. 735).

The Reverse Auction Law provides for the optional adoption of the reverse auction modality for the procurement of common goods and services, defined as “those whose performance and quality standards may be objectively defined in the tender, through specifications that are usual in the market” (translation by author) (Law No. 10,520, art. 1; art. 1, para. 1). The law also allows the reverse auction to be used through information technology resources, as well as through electronic procurement exchanges (Law No. 10,520, art. 2, paras. 1-3). This authorized the creation of electronic reverse auction systems.

Generally, the reverse auction occurs in two phases, preparatory and external:

- In the preparatory phase, the public authority justifies the need for contracting and defines the object, the qualification requirements, the proposal acceptance criteria, the sanctions for non-compliance, and the contract clauses. The authority also designates the auctioneer and her support team (civil or military public servants, preferably staff members of the procuring entity) to conduct the procurement procedure (Law No. 10,520, art. 3).
- In the external phase, tenderers are summoned through a detailed tender, published in the official gazette, in newspapers, or by electronic means, depending on the case. In no fewer than eight days from the publication of the tender, the tenderers present their proposals in a public session, in which they also declare that they fulfill the qualification requirements. In the session, the auctioneer verifies whether the proposals are in accordance with the tender requirements. Afterwards, the tenderer with the lowest bid and those with bids of up to 10 per cent above the lowest bid can bid orally and successively. The proposals are evaluated and classified based on the lowest price criterion, due observation being paid to the terms of supply, the technical specifications, and the minimum quality and performance standards. If the tender requirements are met, including with respect to qualification, the auctioneer declares the winning tenderer (Law No. 10,520, art. 4).

Procurement in the reverse auction modality, particularly when carried out electronically, has allowed revolutionary progress in procurement throughout Brazil, particularly in comparison with the complexity of the other procurement procedures established under the Public Procurement Law (Justen Filho, 2010, p. 13). Several commentators have verified that the reverse auction provides more swiftness, efficiency, and simplification of bureaucracy in public procurement, and a reduction in its operational costs, to the benefit of both the public entity and the supplier or service provider. Hence, many public entities have been giving preference to the reverse auction and incentivizing its adoption as an administrative routine (Bonafé, 2006, pp. 753, 760; Motta, 2006, pp. 650, 652, 654-55).

### 2.1.5 Principle of Equal Treatment and Incentives for Domestic Industry

As a practical expression of the principle of equal treatment, discussed above, the original language of the Public Procurement Law prohibited public administrators from:

admitting, providing for, including, or tolerating, in the tender documents, clauses or conditions that compromise, restrict, or frustrate competitiveness [...] and establish preferences or distinctions based on the place of origin or domicile of the tenderers or any other circumstances that do not pertain or are irrelevant to the specific object of the contract (Law No. 8666, art. 3, para. 1, item I [original language]).  
(Translation by author)

Originally, there was only a guarantee of preference for Brazilian goods and services, to be applied as a tiebreaker when foreign goods and services competed on equal terms with Brazilian ones (Law No. 8666, art. 3, para. 2 [original language]). However, Provisional Measure No. 495/10, converted into Federal Law No. 12,349/10, amended the Public Procurement Law in what concerns the benefits granted to Brazilian companies, goods, and services in public procurement throughout the country. With the amendment, the preference applied as a tiebreaker is now guaranteed, in the following order, to goods and services: (1) produced in the country; (2) produced or rendered by Brazilian companies; or (3) produced or rendered by companies that invest in research and technology development in Brazil (Law No. 8666, art. 3, para. 2 [current language]). In addition, the law now grants other advantages to domestic goods and services:

- A margin of preference can be established in the tender in favour of domestic goods and services that comply with Brazilian technical norms. The margin of preference must be based on studies revised at least every five years, taking into consideration factors such as the generation of employment and income, the effect on tax revenues, and technological innovation, all accomplished in Brazil (Law No. 8666, art. 3, paras. 5-6). This margin can be extended to goods and services of State Parties to the Southern Common Market (Mercosur) (Law No. 8666, art. 3, para. 10).
- An additional margin of preference can be established for domestic goods and services resulting from technological development and innovation accomplished in Brazil (Law No. 8666, art. 3, para. 7).
- The abovementioned margins of preference are defined by the Federal Executive Branch, and their sum may not exceed an amount 25 per cent higher than the price of foreign goods and services (Law No. 8666, art. 3, para. 8).
- Tenders for goods, services, and construction works may require that the contracted party promote measures of commercial, industrial, or technological compensation, or access to advantageous financing conditions (Law No. 8666, art. 3, para. 11).
- With the purpose of installing, maintaining, and perfecting information technology and communication systems considered strategic by the Federal Executive Branch, procurement may be restricted to goods and services with Brazilian technology and produced following a basic production process defined by federal law (Law No. 8666, art. 3, para. 7; Law No. 10,176).

In another example of the social function of public procurement, the granting of advantages for domestic goods and services establishes differential treatment for the Brazilian industry. According to a prominent legal commentator, differential treatment between Brazilians and foreigners is constitutional and justifiable in the name of the common good. The State must be able to use public contracting as an “instrument to implement public policies related to the attainment of values essential to sovereignty and to the interests of the Brazilian Nation” (translation by author), such as incentives for the development of national industry and the reduction of unemployment (Justen Filho, 2010, p. 91).

### 2.1.6 Small and Medium Enterprises (SMEs)

In Brazil, one of the principles of the economic order stipulated in the Federal Constitution is the more favourable treatment of domestic SMEs (Federal Constitution, art. 170, item IX). The Constitution mandates, for example, incentivizing SMEs through simplifying, eliminating, or reducing their obligations (Federal Constitution, art. 179). Considering that the Federal Constitution determined that the differential and more favourable treatment for SMEs in tax matters must be given by complementary law (Federal Constitution, art. 146, item III, sub-item d), National Congress promulgated Complementary Law No. 123/06, instituting the National Statute of the Small and Medium Enterprise (known as the General Law) (Complementary Law No. 123). The General Law includes mechanisms to stimulate small-scale business activity, thus promoting a public policy of Constitutional status (Justen Filho, 2010, p. 13).

With respect to public procurement, the General Law establishes norms relating “to access to credit and to the market, including with respect to the preference in the acquisition of goods and services by public entities” (translation by author) (Complementary Law No. 123, art. 1, item III):

- In public procurement procedures, SMEs only need to prove their tax compliance at the time of signature of the contract (Complementary Law No. 123, art. 42). In case there are any restrictions, the SME has two business days to come into compliance, to pay or finance the debt, or to seek the issuance of the relevant official certificates (Complementary Law No. 123, art. 43, para. 1).
- When competing with non-SMEs for a public contract, SMEs have preferential status as long as their price is equal to or up to 10 per cent (or 5 per cent, in procurement procedures in the reverse auction modality) higher than the lowest-priced proposal (Complementary Law No. 123, art. 44, paras. 1-2).
- Under the General Law, governments may, by law, grant differential and simplified treatment to SMEs in contracting, in order to promote economic and social development, the efficiency of public policies and technological innovation (Complementary Law No. 123, art. 47). To do so, they may hold procurement processes which are only for SMEs (in contracts of up to BRL80,000), which require outsourcing to SMEs (up to 30 per cent of the total value procured), or in which there is a quota for SMEs (of up to 25 per cent of the value of divisible goods and services) (Complementary Law No. 123, art. 48). The sum of the values of these procurement processes may not exceed 25 per cent of the total annual procurement volume (Complementary Law No. 123, art. 48, para. 1). These types of differential treatment are conditioned to the existence of provisions in the tender, and of at least three SME suppliers at the location or region who are able to compete and fulfill the requirements in the tender (Complementary Law No. 123, art. 49).

### 2.1.7 Administrative Sanctions

Certain administrative sanctions provided for in national laws have relevant implications to ensure the appropriate behavior of natural and legal persons in public procurement, including with respect to the fulfillment of environmental standards established in norms (laws, decrees etc.) or in the technical specifications of the tender.

The Public Procurement Law itself establishes administrative penalties, including:

- (1) temporary suspension from the participation in public procurement processes and impediment to contract with public entities for up to two years (Law No. 8666, art. 87, item III), and
- (2) declaration of unfitness to participate in public procurement processes and to contract with public entities as long as the reasons for the punishment subsist or until rehabilitation, through indemnification of the damages caused to public entities, after the period of incidence of the previous sanction (Law No. 8666, art. 87, item IV).

These sanctions can be applied in case the company or the professional:

- incurs in total or partial non-compliance with the public contract (Law No. 8666, art. 87);
- has been finally convicted for willful tax fraud (Law No. 8666, art. 88, item I);
- has committed unlawful acts aimed at frustrating the purposes of the procurement procedures (Law No. 8666, art. 88, item II); or
- demonstrates unfitness to contract with public entities because of the commission of unlawful acts (Law No. 8666, art. 88, item III).

The Administrative Impropriety Law subjects those responsible for the act of impropriety to a punishment, by court decision, in the form of a prohibition to contract with public entities, for periods that may vary from three to ten years (Law No. 8429, art. 12, items I-III).

The Law on Environmental Crimes also provides for administrative sanctions for conducts and activities harmful to the environment carried out by private persons. Among these sanctions is the restriction of rights in the form of a prohibition to contract with public entities for up to three years (Law No. 9605, art. 72, item XI; art. 72, para. 8, item V).

The Reverse Auction Law also provides for the impediment to participate in procurement processes and to contract with public entities for up to five years. This penalty may be applied to, among others, those who fail to deliver documents required in the procurement process, or presents false documents; do not maintain the proposal; fail to perform the contract or commit fraud in performing the contract; behave in a disreputable manner; or commit tax fraud (Law No. 10,520, art. 7). These hypotheses may be used to prohibit from contracting with public entities those who do not meet the established environmental criteria, as will be seen in Section 3.

## 2.2 Sao Paulo State Norms on Public Procurement

### 2.2.1 Reverse Auction and Other Electronic Tools

Aiming at better employing public resources and rendering state public entities more efficient in the management of their expenses, Decree No. 45,085/2000 instituted an electronic contracting system. The system makes it optional for public administrators to use a shopping card, a magnetic card used for electronic payment in cases of exemption from procurement. It also provides for the optional use of the Internet to receive proposals in the procurement of goods for immediate delivery carried out in the invitation modality, as long as the tenderers are registered in advance in the Registry of Suppliers (Cadfor) of the Integrated System of Physical and Financial Information (Siafísico) (Decree No. 45,085). Decree No. 45,695/01 regulates this system, naming it BEC/SP (Decree No. 45,695).

The creation of BEC/SP—which pre-dated the Federal Reverse Auction Law—paved the way for the adoption of the electronic reverse auction in the State of Sao Paulo (Motta, 2006, p. 655). Procurement in the reverse auction modality is governed by State Decree No. 47,297/02 (Decree No. 47,297). State Decree No. 49,722/05 regulates the electronic reverse auction, incorporating it to the BEC/SP system (Decree No. 49,722). State Decree No. 51,469/07 makes the electronic reverse auction through the BEC/SP mandatory for the procurement of common goods and services in every entity of the state government, according to the schedule defined by Resolution No. 15/07 of the Treasury Secretariat, and the online recording of information on reverse auctions ([www.pregao.sp.gov.br](http://www.pregao.sp.gov.br)) (Decree No. 51,469; Resolution SF-15). Participation in electronic reverse auctions is now conditioned to registration in the Unified Registry of Suppliers (Caufesp), according to the regulation on reverse auctions, in an Annex to Resolution No. 27/06 of the Office of the Chief of Staff (Resolution CC-27, art. 2).

In addition to the BEC/SP and the electronic reverse auctions carried out in it, the State Government adopted other measures to increase efficiency and transparency in the purchasing decisions of State Government entities. One example is State Decree No. 48,405/04, which created Pubnet ([www.pubnet.com.br](http://www.pubnet.com.br)), a system for online publication in the Official Gazette of the state (Decree No. 48,405, arts. 1-2, 6). Pubnet is integrated with the system of online publication of tenders ([www.e-negociospublicos.com.br](http://www.e-negociospublicos.com.br)), which has the objective of publishing the acts of all phases and incidents in the procurement processes, the acts relating to exclusion and exemption from tendering, as well as relevant legal texts (Decree No. 48,405, arts. 3, 5). The system allows the government to answer online queries from the public, to browse the database according to several criteria, to generate statistics and comparative maps, and to automatically publicize tenders by e-mail based on market characteristics of potential tenderers (Decree No. 48,405, art. 7). Finally, the website can include procurement processes from the Legislative and Judiciary Branches, as well as from other public entities (Decree No. 48,405, art. 9).

#### TEXT BOX 2: ELECTRONIC REVERSE AUCTION

1. Publication of the tender.
2. Submission of proposals: Tenderers submit proposals by the established deadlines in accordance with the specifications of the tender. Proposals must not contain any form of identification of the tenderer and remain electronically stored.
3. Opening of the public session: The auctioneer opens the public session, and proposals become available for the scrutiny of all tenderers and the public.
4. Classification of the proposals: Only the tenderer with the lowest-priced proposal and those with proposals of up to 10 per cent above the lowest-priced proposal remain in the dispute. If there are fewer than three proposals that fall under this category, tenderers with the three best proposals participate in the process.
5. Participation of tenderers in the public session: Potential tenderers with prior accreditation and access passwords participate.
6. Analysis of the proposals: The auctioneer checks whether the proposals meet the technical specifications in the tender. Proposals that give identification of the tenderer are disqualified. The auctioneer strives to not to disqualify proposals with merely formal errors in order to maintain competition. Goods or services of higher complexity may involve further investigations and even suspension of the public session.
7. Bidding phase: A 15-minute phase in which the tenderers compete to obtain the tender by progressively reducing their prices.
  - a. Reverse Auction: In this context, a reverse auction occurs, in which the tenderers can lower their price and derive savings for the public entity. This is different from traditional procurement modalities, in which the proposals are confidential and cannot be changed.
  - b. Every time a tenderer offers a new bid during the three final minutes of the bidding phase, this phase is extended for additional three minutes, to allow other tenderers to give even lower bids.
  - c. If the proposal of an SME has a price up to 5 per cent higher than the proposal of a non-SME tenderer, the SME has a legal preference.
8. Negotiations between the auctioneer and the tenderer with best proposal: Identity of the tenderer is revealed. Auctioneer attempts to convince the tenderer to offer more favourable terms and conditions of payment or even further lower the price.
  - a. Consideration of the reference price: The post-negotiation price is compared with reference price. If it is higher than the reference price, the government calls upon the other tenderers. Reference prices for service items in Cadterc are available in the Cadterc database; for the items in BEC/SP, the reference price can be obtained in the database of suggested prices, in the history of contracted prices, or from market research.
  - b. Practicability analysis: If the price is excessively lower than the reference price, an auctioneer suspecting impracticability requests the tenderer to demonstrate that the proposal is practicable.

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9. Verification of the tenderer's qualification: The system informs whether the tenderer's official certificates on record are up-to-date. The Sanctions website is also checked. The tenderer may be given a short time period to submit any missing documents. If the tenderer does not qualify, the auctioneer will analyze the other tenderers.
10. Payment and receipt of purchased goods: Payment occurs 30 days after the goods procured are accepted, giving the public entity a chance to refuse the goods delivered if they do not meet tender specification. The supplier delivers the purchased goods to the contract manager, and not the auctioneer who checked whether the proposals met the technical specifications in the tender, at Step 6. This is a weakness in the procurement process, as the contract manager may be less familiar with the tender specifications than the auctioneer.
11. On average, there are five or six tenderers in each reverse auction. The all-time highest number of tenderers is 22. Typically, savings obtained in reverse auctions vary between 15 per cent and 17 per cent with respect to the reference price. The negotiations conducted by the auctioneers allowed accumulated savings of almost BRL3 billion (about USD1.8 billion), in nominal values, since the State Government started to hold electronic reverse auctions (H. J. Ferragino, Group of Technical Support to Innovation, Public Management Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

*This box was developed based on Penz (2004), as well as on information obtained during a reverse auction procedure carried out by Mr. Carlos Roberto Junqueira, Auctioneer from the Office of the Chief of Staff, in the Bandeirantes Palace, on June 2, 2011.*

## 2.2.2 Inversion of Phases

As a rule, pursuant to the Public Procurement Law, in procurement processes in general, the tenderers are qualified first, and only later does the commercial part of the contracting process take place. The Reverse Auction Law, applicable to the lowest-price procurement of common goods and services, inverts this order in procurement processes in the reverse auction modality, which consists in initial proposals and successive bidding in a public session. Thus, in the sphere of federal procurement norms, the inversion of phases is an exception restricted to the reverse auction modality.

However, in the State of Sao Paulo, State Law No. 13,121/08, amending State Law No. 6,544/89 (State Law on Public Procurement), provides for the inversion of phases in other procurement modalities, including in those for the contracting of construction works and in procurement based on the best-technique criterion or on the technique-and-price criterion. In this inversed order, the competitive phase occurs first; winning tenderers are only qualified after the proposals are opened, as occurs in the reverse auction modality (Law No. 13,121, art. 1). State Decree No. 54,010/09 makes this inversion of phases mandatory in procurement processes carried out by all state government entities in the State of Sao Paulo in the competitive bidding, request for quotations, and invitation modalities (Decree No. 54,010). In short, the inversion of phases is the rule in all procurement modalities in Sao Paulo.

The inversion of phases has been credited with reducing the length and the number of appeals in procurement processes (A. M. S. Mendes, Superintendent for Supplies and Strategic Contracting, Basic Sanitation Company of Sao Paulo State, personal communication, June 2, 2011). However, it has come under criticism. For example, the Brazilian Union of the Service Sector (*Central Brasileira do Setor de Serviços*), a union of entrepreneurs, has filed a Direct Unconstitutionality Action (*Ação Direta de Inconstitucionalidade—Adin*) No. 4,116 challenging State Law

No. 13,121/08, on the grounds that the statute establishes a general norm on procurement, thus invading the sphere of legislative competence of the Federal Union. The State of Sao Paulo, in turn, argues that the order of the phases in the procurement procedure is a matter within the competence of the state, as it is of procedural rather than general nature. Adin 4,116 is pending judgment by the Federal Supreme Court (*Supremo Tribunal Federal*—STF).

### 2.2.3 Small and Medium Enterprises (SMEs)

In the State of Sao Paulo, differential treatment to SMEs, provided for by article 47 of the General Law, is governed by State Law No. 13,122/08 and by State Decree No. 54,229/09 (Law No. 13,122; Decree No. 54,229). The state law and decree adopt the three forms of differential treatment provided for in the General Law: procurement procedures held only for SMEs in contracts of up to BRL80,000, outsourcing to SMEs of up to 30 per cent of the total value procured, and a quota for SMEs of up to 25 per cent in the contracting of divisible goods and services. The decree provides more details on the implementation of each of the three instruments of differential treatment. Cadfor electronically identifies SMEs, facilitating the application of these legal benefits (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

However, the incentives for SMEs in procurement has faced resistance in the Court of Audit of the State of Sao Paulo (*Tribunal de Contas do Estado de São Paulo*—TCE/SP). According to the Court of Audit, a lower price proposal often prevails over other public policy priorities, such as incentivizing entrepreneurship and regional development (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

### 2.2.4 Incentives for Domestic Industry

Currently there are no measures to favour Brazilian goods in the procurement policy of the State Government, because the provisions included by Federal Law No. 12,349/10 have not yet been regulated by Federal Decree (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

### 2.2.5 Administrative Sanctions

State Decree No. 48,999/04 regulates, in the State of Sao Paulo, the administrative sanction of prohibition to contract with public entities for up to five years, provided for in the Reverse Auction Law (Decree No. 48,999). Resolution CC-52/05 of the Office of the Chief of Staff provides detailed guidance on the application of sanctions based on the Public Procurement Law and on the Reverse Auction Law (Resolution CC-52, art. 1). Finally, State Decree No. 54,704/09 regulates, in the State Government, the administrative sanction of prohibition to contract with public entities for up to three years, provided for in the Law on Environmental Crimes (Decree No. 54,704).

Regardless of the legal grounds, the application of a sanction must be formalized through a reasoned order, respecting due process and the adversarial system. Furthermore, the sanction must be published, after the appeals phase, in the Official Gazette of the state and in the electronic sanctions record system ([www.sancoes.sp.gov.br](http://www.sancoes.sp.gov.br)). The supplier's or the service provider's password for access to the BEC/SP system must be blocked (Decree No. 48,999, arts. 2-3; Resolution CC-52, arts. 2-3; Resolution CC-52, Annex, para. 6.1; Decree No. 54,704, arts. 2-3).

The Administrative Sanctions website, created in 2004, serves to publish on the Internet a list of all natural and legal persons prohibited from participating in procurement and from contracting with public entities in the State of Sao Paulo, as well as to expand the scope of the penalties (previously restricted to certain departments or secretariats) to all state government entities. Those sanctioned are listed by their name or company name, their number in the National Registry of Legal Entities (*Cadastro Nacional de Pessoas Jurídicas*—CNPJ) or the National Registry of Natural Persons (*Cadastro Nacional de Pessoas Físicas*—CPF), the origin and file number of the administrative proceeding in which the decision to sanction was rendered, the duration of the sanction and its legal grounds (Secretaria de Gestão Pública [SGP], n.d.A).

Sanctions currently listed on the website are in the following categories: declaration of unfitness and temporary suspension (both sanctions provided for in the Public Procurement Law), impediment to participate in procurement processes and to contract with public entities (provided for in the Reverse Auction Law), and court decision (applying the penalty of prohibition to contract with public entities, based on the Administrative Impropriety Law). Sanctions in the category environmental violations (provided for in the Law on Environmental Crimes) will soon be included (H. J. Ferragino, Group of Technical Support to Innovation, Public Management Secretariat, personal communication, June 1, 2011).

The sanctioned persons are prohibited from contracting or from renewing their contracts with public entities. The procedure for applying sanctions has also been expedited, which resulted in a significant increase in the number of sanctions applied—from about 50 to about 800 currently. The state benefits from no longer contracting with sanctioned suppliers and service providers. In addition, the names of persons sanctioned by the Federal Government are published indirectly on the Sanctions website, through a link to the Transparency Portal of the Federal Government (H. J. Ferragino, Group of Technical Support to Innovation, Public Management Secretariat, Sao Paulo State Government, personal communication, June 1, 2011). Although the main objective of the State Government is not to punish companies and individuals, this must be done in order to improve the quality of goods supplied and services rendered to the State Government (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

## 2.3 Norms on Sustainable Public Procurement

The Sao Paulo SPP policy, as seen above, was politically articulated via the creation of the WG-2004 and legally implemented via the creation of the Socio-Environmental Label (see Section 1). However, even before these political and legal cornerstones, there already were state norms creating, in the field of public procurement and contracting, measures that take into account socio-environmental criteria. Before analyzing the norms developed after the creation of the WG-2004, it is important to briefly review those created before the WG-2004 (Biderman et al., 2007, p. 38; D'Amico & Agune, 2007, p. 11).

### 2.3.1 Norms Prior to the 2004 Working Group

- **State Decree No. 41,629/97:** prohibits state government entities from purchasing goods or equipment containing substances that deplete the ozone layer, controlled by the Montreal Protocol (Decree No. 41,629).
- **State Decree No. 42,836/98:** mandates that vehicles within the special group acquired by the State Government are ethanol-fueled, and establishes the preference, in the rental of vehicles by state entities, for ethanol-fueled vehicles (Decree No. 42,836).

- **State Law No. 10,218/99:** forbids state government entities from contracting “services and construction works with companies that, in the quality of employers, have had a director, manager, or employee who has been condemned for a crime or misdemeanor in virtue of acts of discrimination based on race, skin color, gender, or marital status, of the adoption of practices aimed at inhibiting or hindering the exercise of the right to motherhood, or of any other discriminatory criterion for the admission or continued employment of men or of women” (translation by author) (Decree No. 10,218).
- **State Law No. 10,761/01:** prohibits the use of genetically modified foods in student meals in the public educational institutions belonging to the Sao Paulo State Government (Law No. 10,761).
- **State Decree No. 45,643/01:** mandates all state government entities to acquire high-efficiency light bulbs, with the lowest mercury content among those available in the market, and cables and wires with high electrical efficiency and low lead and polyvinyl chloride (PVC) contents (Decree No. 45,643).
- **State Decree No. 48,138/03:** institutes measures to reduce the consumption of water and to rationalize its use in public services and construction works of the State Government, including through the acquisition of new water-saving hydraulic and sanitation equipment and metals that present better performance from the point of view of efficiency in the consumption of drinkable water (Decree No. 48,138).
- **State Decree No. 49,674/05:** establishes control procedures to prove the legal origin of native timber products and sub-products used in construction works and engineering services. In particular, it establishes mandatory requirements for tenders and public contracts, as well as the possibility to terminate the contract in case of non-compliance, without prejudice to applicable administrative and criminal penalties (Decree No. 49,674).

### 2.3.2 The Socio-Environmental Label

The preamble of State Decree No. 50,170/05 recalls that the government has a duty to preserve the environment, promote sustainable development, and stimulate social public policies, and evokes the need to publicly recognize measures adopted by the State Government aimed at sustainable consumption (Decree No. 50,170; Federal Constitution, art. 225). In this context, the decree lists socio-environmental criteria (compatible with the idea of sustainable development) the adoption of which must be considered in government policies, programs, and measures (Decree No. 50,170, arts.1-2):

- Incentives to enhance social policies
- Enhancement of transparency in management
- Savings in water and energy consumption
- Minimization of waste generation
- Rationalization of the use of raw materials
- Reduction of the emission of pollutants
- Adoption of technologies with less environmental impact
- Use of low toxicity products
- Adoption of technologies with lower greenhouse gas emissions than conventional ones (criterion added by Decree No. 55,947, art. 31, item I)

The Socio-Environmental Label must be stamped in documents relating to activities that adopt at least one of these criteria. It must also be adopted in the descriptions of goods and in the technical specifications in Cadmat, Cadterc, and other official registries and catalogs of goods, as well as in the Cadterc Studies on Services, based on identification by the Environment Secretariat and approval by the Public Management Secretariat. The procurement of construction works by entities not required to follow the rules in the Cadterc Studies must also adopt, where applicable, technical specifications that promote socio-environmental sustainability (Decree No. 50,170, art. 3; art. 4, paras. 1-2; D'Amico, 2010, p. 6).

### 2.3.3 Cadmadeira and Legal Timber Label

Through State Decree No. 53,047/08, the State Government created the State Registry of Legal Entities Dealing in Forest Products and Subproducts of Brazilian Native Flora in the State of Sao Paulo (Cadmadeira), organized and electronically managed by the Environment Secretariat, in collaboration with the Brazilian Institute of Environment and Renewable Natural Resources (Ibama). The objective of Cadmadeira is to promote SPP in the State of Sao Paulo by controlling the legal use of native forest products and subproducts and through the publication of a list of legal persons trading in them in the State of Sao Paulo (Decree No. 53,047, preamble; arts. 1-2).

To be accredited in Cadmadeira, a legal entity needs to present its CNPJ number, its Articles of Incorporation or Organization, and proof of compliance with the Federal Technical Registry of Activities that Potentially Pollute or Use Environmental Resources, maintained by Ibama (Decree No. 53,047, art. 3). Accreditation is public and voluntary, and may be suspended in case a penalty for environmental violation is imposed (Decree No. 53,047, art. 3, paras. 1-3).

Legal persons accredited in Cadmadeira may receive the Legal Timber Label, as long as they maintain their stocks organized by type, size, and species (in the case of timber) or by species and unit (in the case of other forest products and subproducts), and provide semiannual technical reports summarizing sales and variations in stock levels (Decree No. 53,047, art. 5). The Environment Secretariat grants the Legal Timber Label to acknowledge suppliers that trade in forest products and subproducts in a responsible manner (Decree No. 53,047, art. 5, para. 1). The label is valid for one year and can be indefinitely renewed (Decree No. 53,047, art. 5, para. 2).

State Decree No. 53,047/08 made Cadmadeira accreditation mandatory in every contract for the direct purchase of forest products and subproducts, both for tenderers and in cases of exemption or exclusion from procurement. Procurement of construction works and engineering services using forest products and subproducts must also require that these goods be purchased from legal persons accredited in Cadmadeira (Decree No. 53,047, arts. 7-8).

Finally, to monitor and provide guidance for the management of Cadmadeira and the Legal Timber Label, the decree also created the Technical Chamber for Forestry Matters of the Environment Secretariat. The Technical Chamber is formed by representatives of government entities and civil society (Decree No. 53,047, art. 14).

### 2.3.4 The SPP Program

State Decree No. 53,336/08, which instituted the SPP Program, is an important tool for the State Government's consolidation of socio-environmental criteria in public procurement, of sustainable consumption initiatives, and of the use of the government's purchasing power to promote sustainable development (Decree No. 53,336, preamble; art. 1). The Program adopts the same criteria used by the Socio-Environmental Label (Decree No. 53,336, art. 2). The decree also creates the institutional structure for the articulation of the SPP Program initiatives:

- **Public Management Secretariat:** as the coordinator of the Program, the secretariat proposes guidelines, rules, and procedures to promote the use of socio-environmental criteria in public procurement, as well as articulates the various government entities aiming at the harmonization of the adopted criteria (Decree No. 53,336, arts. 4-5).
- **Environment Secretariat:** conducts studies and provides environmental advice, aiming at the inclusion of socio-environmental criteria in tenders and contracts (Decree No. 53,336, art. 6).
- **SPP Commissions:** each government department or entity must have a commission of at least two members. There are 37 commissions in total. The mandate of the commissions is to implement the Program in the department or entity in question, to raise awareness among public servants and promote their participation (especially those involved in purchasing and contracting), and to present an annual report to the Public Management Secretariat. The members of each commission are designated and do not receive additional compensation for serving on the commission (Decree No. 53,336, arts. 7-9). The commissions also exchange knowledge and experience, and may receive inquiries through the website [www.comprassustentaveis.net](http://www.comprassustentaveis.net) (D'Amico, 2010, p. 5).

### 2.3.5 The State Policy on Climate Change

State Law No. 13,798/09 instituted the State Policy on Climate Change of the State of Sao Paulo (*Política Estadual de Mudanças Climáticas*—PEMC), with the general objective of establishing Sao Paulo's commitment to greenhouse gas mitigation and adaptation efforts (Law No. 13,798, art. 2). In this sense, the law sets the goal of reducing carbon dioxide emissions by 20 per cent by 2020 in relation to the level of emissions in 2005 (Law No. 13,798, art. 32, para. 1).

One of the specific objectives of the PEMC is “to create and expand the reach of economic, financial, and fiscal instruments, including the use of the State's purchasing power, for the purposes of this law” (translation by author) (emphasis added) (Law No. 13,798, art. 5, item XIII). In the section on production, commerce, and consumption, the law provides (Law No. 13,798, art. 11):

The Government shall propose and promote measures to favour sustainable production, commerce, and consumption patterns, in order to reduce input demand, to use less impacting materials, and to generate less waste, consequently reducing greenhouse gas emissions. (Translation by author)

To achieve this purpose, the PEMC provides that SPP must be considered as a way to readjust the State Government's profile and purchasing power (Law No. 13,798, art. 12, item I). The State Government was committed to organizing, by November 2010, a model of SPP procedure (Law No. 13,798, art. 33, item VIII). The specific regulation of the PEMC was done by a decree including the following rules on SPP (Decree No. 55,947):

- It determines that environmental performance standards of the goods marketed in the State are gradually adopted in public procurement, provided that competition among tenderers is ensured, and that the public entities do not incur additional costs (Decree No. 55,947, art. 30, para. 3).
- It includes as a criterion for obtaining the Socio-Environmental Label “the adoption of technologies with lower greenhouse gas emissions than conventional ones” (translation by author) (Decree No. 55,947, art. 31, item I).

- It authorizes the Environment, Public Management, and Treasury Secretariats to suggest changes in Cadmat, to include goods of priority purchasing to reduce greenhouse gas emissions, and to exclude goods with high emission potential (Decree No. 55,947, art. 31, item II).

### TEXT BOX 3: LEGAL FRAMEWORK

The structure of the supply policy of the Sao Paulo State Government is strongly based on the definition of general rules for the procurement of the most relevant and frequently purchased goods and services in all state government entities.

Among the procurement standardization procedures are the creation of reference values to formalize and renegotiate service contracts and their technical specifications, and instruments such as the Electronic Procurement Exchange (BEC/SP), the reverse auction (initially held in person and later electronically), the reversion of the phases of the other procurement modalities, and the institution of an all-encompassing and effective system of administrative sanctions, to improve the rendering of services.

*Source: Sao Paulo State Government.*

### 3.0 The Program in Action

The procedures for the procurement of goods, services, and construction works are reasonably standardized throughout the world, although there are some national and local specificities. Generally, the phases are as follows: definition of the object of the contract; development of the technical specifications and the contractual parameters for the goods, services, or construction works procured; selection of the supplier, service provider, or contractor; and evaluation and selection of the best proposal (Comissão Europeia, 2005, p. 13). The MTF-SPP describes this process in a broader manner, including earlier phases (identification of the need to purchase and risk evaluation) and later phases (supplier management and contract management) (MTF, 2011, Session 5, slide 2). In the case of SPP programs, the ideal approach is to consider the adoption of sustainability criteria in each of the phases of the procurement and contracting processes.

In Brazil (and consequently in Sao Paulo), most procurement modalities include the phases of tender publication, qualification of tenderers, presentation of proposals, classification of proposals, ratification of the proceedings, and awarding of the contract to the winning tenderer. In the reverse auction procedure, which is mandatory for the procurement of common goods and services, there are some different aspects. The main difference is that tenderers are accredited in advance, and only the winning tenderer has to go through the qualification phase (Biderman et al., 2007, p. 34).

In the State Government, public servants in 1,825 procuring units carry out procurement in a decentralized manner, but through standardized and integrated electronic systems, which were mentioned and briefly described in the two previous sections. The SPP Program aims at influencing the purchase decisions of the State Government, in order to make them more sustainable through the inclusion of socio-environmental criteria in the technical specification templates and in the catalogs of goods of those systems (D'Amico & Agune, 2007, pp. 11, 19).

Thus, while recognizing the importance of considering sustainability aspects in all phases of the procurement of goods, services, and construction works, the Program's emphasis is to influence the procurement process in the internal or preparatory phase (D'Amico & Agune, 2007, pp. 11, 19). This is a crucial phase, as it offers the best opportunities for the inclusion of environmental considerations. Moreover, any mistakes in this phase may have negative repercussions on subsequent stages, and in the outcome of the procurement process (Comissão Europeia, 2005, p. 13).

Life cycle analysis, commonly employed in SPP programs, is relevant in all phases of public procurement, particularly in the internal or preparatory phase. It consists of an analysis of all the direct and indirect environmental, social, and economic costs and benefits involved in the purchase of goods or in the contracting of services or construction works. For that purpose, the complete trajectory of consumption or execution of the object of the contract must be taken into account, encompassing the following aspects, among others: production or extraction of resources; transport and logistics; consumption or use of the good, or delivery of the service; contract management; durability and maintenance of goods or services; and reuse, recycling, and final disposal of waste. The analysis must be as broad as possible, including considerations on regional development, technological innovation, public health, and participation of SMEs (D'Amico & Agune, 2007, pp. 17-18).

Other fiscal policies facilitate and support the SPP Program, such as the Green Tax on the Circulation of Goods and Services (*Imposto de Circulação de Mercadorias e Serviços*—ICMS, a value-added tax), managed by the Environment Secretariat, and the preferential line of credit for green economy projects, offered by the Sao Paulo Development Agency (*Agência de Fomento Paulista - Nossa Caixa Desenvolvimento*) (F. L. Mota, Coordination of Decentralized

Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011). Text Box 5 on Ecofrotas provides more details about this line of credit.

However, in view of the scope of this case study, this section is restricted to analyzing how the State Government has been taking sustainability criteria into consideration in the various phases of the procurement process, particularly in the internal or preparatory phase, which is the explicit emphasis of the Program.

### 3.1 Identifying the Need to Purchase and Evaluating Risks

The SPP Program currently does not guide public servants involved in public procurement on the evaluation and identification of needs and risks pertaining to the activity. Considering the procurement cycle, the relevance of the program begins in the next phase, namely, the development of technical specifications and contracts. However, it is worth mentioning that the State Government has been taking into account, in its plans to expand and deepen the contents of the Course on SPP taught to public servants, the phase of identifying and evaluating needs and risks of contracting (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

### 3.2 Developing Technical Specifications and Contracts

The objectives of the Program are pursued mainly through the inclusion of socio-environmental criteria in the technical specifications of the objects of procurement. The State Government periodically reviews these specifications, to keep them up to date on scientific and technological innovations generated by the private sector with respect to sustainable goods and services.

The following section is subdivided similarly to the structuring of the WG-2004 in three working subgroups, which include socio-environmental criteria in the technical specifications of (1) goods, (2) services, and (3) construction works.

#### 3.2.1 Goods

##### 3.2.1.1 Work of the WG-2004

The WG-2004, through its subgroup on Goods, revised and adapted Cadmat to reflect socio-environmental criteria. The work of the subgroup consisted in (D'Amico & Agune, 2007, p. 14-15; CQGP, n.d.):

- Analyzing the environmental legislation relating to the specifications of the goods;
- Analyzing the environmental impacts of the goods;
- Identifying technical or financial constraints of the more sustainable goods with respect to other goods available in the market;
- Suggesting goods to be included in or excluded from the catalog, based on sustainability criteria;
- Developing a methodology to create criteria and indicators of sustainability;
- Proposing changes in the technical specifications of some goods; and
- Reporting the results obtained in electronic and printed media.

### 3.2.1.2 Awarding the Socio-Environmental Label

One of the main results of the work of the WG-2004 subgroup on Goods was the inclusion of the Socio-Environmental Label in the descriptions of goods in Cadmat. There are approximately 150,000 goods in the BEC/SP catalog, of which about 7,500 are Class A: frequently purchased goods, amounting to 20 per cent of total consumption. Only these items were considered strategic based on their relevance, and were analyzed by the subgroup on Goods. The Socio-Environmental Label was granted to more than 300 Class A goods (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

All the goods that initially received the label were already included in the BEC/SP catalog. Thus, the label only highlighted, among the goods that already existed in the catalog, those whose specifications have socio-environmental advantages in comparison with other catalog items. In other words, it serves to indicate a differential of environmental quality of already existing specifications (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communications, May 30-31, 2011).

There currently are 462 goods recommended by this label, forming the Socio-Environmental Catalog of BEC/SP (SEFAZ, n.d.C). The decision to grant the label to a specific good is based mainly on an evaluation of information supplied by the producer, and not based on a complete technical life cycle analysis of the goods. This type of analysis is still uncommon in Brazil, and it would demand a larger team, with specifically trained specialists (D. Cavalcanti, Environmental Planning Coordination, Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

It was a deliberate decision to not adopt a life cycle analysis of the goods for awarding the Socio-Environmental Label, which is in contrast to a significant number of SPP programs throughout the world. According to a government official involved in the SPP program, it was a strategic choice to make the SPP Program more “simple and objective.” Public procurement is conducted in the State Government based on the consideration of the best (more sustainable) alternatives available in Cadmat, according to an evaluation by Environment Secretariat specialists (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, Aug. 3, 2011).

According to the Chief Environmental Attorney, there are several reasons why the State Government decided to use the Environmental Label to select preferred goods, instead of using existing certification labels (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011):

- It considered that certification would need to be required by law, would need to encompass the entire production chain of the goods, and would require an entity to audit the certification processes. The State Government did not have this technical structure or political capital to create it.
- In addition, it verified that there were few internationally certified goods in the Brazilian market (with the exception of a few widely used certification schemes, such as Forest Stewardship Council—FSC and International Organization for Standardization—ISO).
- Finally, it was concerned about a perverse incentive to form certification entities in order to legitimize goods obtained illegally. As such, the State Government chose to analyze the specifications of finished goods, without an in-depth study of the production chain, thus giving birth to the Socio-Environmental Label.

Thus, the label is not a certificate of environmental quality; rather, it serves to make it easier for public servants to choose goods and services that encompass socio-environmental criteria, and to signal the SPP policy to the market (D'Amico, 2010, p. 6). The Treasury Secretariat did not verify whether the items with the label cost more than those without it, since most items to which the label was granted were already available in the market and already existed in the BEC/SP catalog (M. F. A. Ferreira, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011). This indicates that the items with the label are environmentally and economically viable and competitive. Furthermore, the Treasury Secretariat has seen a significant increase in purchases of items with the Socio-Environmental Label (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

### 3.2.1.3 Socio-Environmental Label Application Examples

In the category “Road vehicles—Mixed and passenger motorized vehicles—Motorized vehicle for representation,” vehicles fueled only by gasoline did not receive the label, as opposed to most bi-fuel vehicles (fueled by ethanol or gasoline). This signals the legal preference of the State Government for vehicles fueled by less-polluting fuels, incentivizing public procurers to prioritize the purchase of such vehicles.

Another application example involves the Cadmat listing of 41 sulfite paper products (“Office supplies and appliances—Materials and supplies for didactic and pedagogic use, stationery, and art brushes—Sulfite stationery paper”). The specifications of most of these goods include the Socio-Environmental Label, and require that suppliers provide proof of certification by the FSC or the Brazilian Forest Certification Program (*Programa Brasileiro de Certificação Florestal—Cerflor*) of the National Institute of Metrology, Standardization, and Industrial Quality (*Instituto Nacional de Metrologia, Normalização e Qualidade Industrial—Inmetro*) (SEFAZ, n.d.C).

### 3.2.1.4 Requirement of Environmental Certification

The Court of Audit of the State of Sao Paulo prohibits the requirement of quality certification as a qualification requirement in procurement processes, except when certification is required by law (Summula TCE/SP No. 17). The Chief Environmental Attorney explains that this prohibition is commonly misinterpreted, as it prohibits the requirement of certification as a *qualification requirement*, but not the requirement of certification *in the technical specifications* of the procurement process, as is the case of the sulfite paper items in the BEC/SP catalog (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

In procurement processes using the best technique criterion, the existence of environmental certification has been used as a scoring criterion. The use of certification results from the constitutional precept that goods embedding environmental concerns should receive differential treatment. Attorney Sílvia Nascimento cites timber as an example: the government may only purchase timber of legal origin (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

### 3.2.1.5 Item Analysis Procedure for Awarding the Socio-Environmental Label

The Cadmat procedure of analysis for awarding the Socio-Environmental Label is straightforward. The catalog of goods is available on the BEC/SP website. Four specialists distribute among themselves the analysis of 14 groups or families of goods.<sup>2</sup>

The specialists update the catalogue by evaluating whether there are items that have been added or removed by the Treasury Secretariat. A public servant who wishes to suggest an item for awarding the label can get in touch with the Treasury or the Environment Secretariat (D. Cavalcanti, Environmental Planning Coordination, Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011; F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011). Producers and suppliers can also suggest technical specifications to existing eco-products to the Environment Secretariat for inclusion in the Socio-Environmental Catalog (Secretaria do Meio Ambiente do Estado de São Paulo (SMA), n.d.).

In analyzing goods, the specialists may take one of four actions (D. Cavalcanti, Environmental Planning Coordination, Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011):

1. Conclude that an existing BEC/SP item could be awarded the Socio-Environmental Label;
2. Assess goods which do not have the required socio-environmental criteria, but which, with a few changes, could be granted the label, after a market study determining the existence of a sufficient number of suppliers;
3. Suggest new items for the catalog, in cases where companies with sustainable solutions would like to supply them to the government, but cannot because the technical specifications are not included in the BEC/SP catalog; or
4. Suggest that the Treasury Secretariat exclude certain items from the BEC/SP catalog. Noteworthy examples are mahogany products and incandescent light bulbs.

Four public servants from the Environment Secretariat (one environmental engineer, two sanitation technicians, and one lawyer) form the team responsible for analyzing the goods and granting the Socio-Environmental Label. The Environmental Planning Coordination of the Environment Secretariat is trying to obtain more specialists for the analysis team. The SPP Commissions may indicate goods that should be awarded the label, although it is rare that they do so (D. Cavalcanti, Environmental Planning Coordination, Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011). Thus, the goods with the Socio-Environmental Label are mainly those analyzed by the Environment Secretariat team.

The lack of human capital to carry out a life cycle analysis of the goods leads to a few bottlenecks. In the case of light bulbs, for instance, those with higher energy efficiency may be difficult to dispose of because they contain chemical products or heavy metals harmful to the environment. This illustrates the need for caution in awarding the Socio-Environmental Label, so that the government does not lightly recommend sustainable goods.

<sup>2</sup> According to the Environment Secretariat (SMA, 2010, p. 39), the analyzed groups are: Group 22—Railways— Accessories, Equipment, and Components; Group 23—Road Vehicles; Group 41—Equipment for Air Refrigeration, Conditioning, and Purification; Group 45— Equipment for Hydraulic, Sanitary, and Heating Installations; Group 56—Construction and Pavement Materials; Group 61—Electrical Conductors, and Power and Distribution Equipment; Group 75—Office Supplies and Equipment; Group 80—Brushes, Paints, Sealants, and Adhesives; Group 81—Receptacles and Materials for Wrapping and Packaging; Group 85—Toiletries; Group 87—Agricultural Supplies; Group 91—Fuels, Lubricating Oils, and Waxes; Group 93—Non-Metallic Manufactured Materials; and Group 95—Metallic Bars, Plates, and Profiles.

Awarding the Socio-Environmental Label is within the Environment Secretariat's technical responsibility, but it also goes through the analysis of other secretariats, such as the Public Management Secretariat (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 31, 2011). The Treasury Secretariat, for example, may challenge and reevaluate the analysis performed by the Environment Secretariat regarding the inclusion or exclusion of items with the Socio-Environmental Label, based on the need, on the part of the Treasury Secretariat, to look at the market's ability to supply the government demand for the sustainable item, thereby ensuring competition (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

### 3.2.1.6 Acceptance of the SPP Program and of the Socio-Environmental Label

The Chief Environmental Attorney explains that public servants of the State of Sao Paulo may fear carrying out procurement based on sustainability criteria, because they believe that there are legal weaknesses that could lead the official control institutions to question their conduct. To date, however, there has not been a challenge to tenders requiring goods with the label or specific certification (such as FSC or Cerflor), nor has the Court of Audit or the public ever administratively or judicially challenged the SPP Program or its implementation. Tenderers have also not challenged a tender because of the inclusion of socio-environmental criteria (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

Indeed, the efficiency and transparency in the negotiation environment may have served to reduce the number of challenges to tenders. This aspect is enhanced by the improved management of public spending via the production of management reports (M. F. A. Ferreira, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011). For example, the Treasury Secretariat can check how much was acquired by each entity or even by each procuring unit (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

### 3.2.2 Services

The Gati is responsible for maintaining the management system of service contracts, formed by two modules: a *registry* to control contracts, and *studies and standards* on service contracts for all state government entities. The system was created along with Cadterc in 1995, after the management restructuring in the Covas Administration, which promoted the standardization of contracts to make public management more efficient (H. J. Ferragino, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, June 1, 2011). The evolution of other electronic tools developed by the Gati since then (including Siafísico, BEC/SP, Pubnet, the e-procurement website, Caufesp, among others) was detailed in Section 1.

### 3.2.2.1 Cadterc Registry

All service contracts (with the exception of those regarding construction works and the purchase of goods) must be included in the registry of service contracts (Law No. 14,185, art. 33; Decree No. 48,326, art. 7). The registry is a technical database, managed by the Internal Affairs of the State of Sao Paulo (*Corregedoria Geral da Administração Pública*) in collaboration with the Gati, consolidating information that can be viewed only by the government ([www.terceirizados.sp.gov.br](http://www.terceirizados.sp.gov.br)) (H. J. Ferragino, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

In this system, the public manager can compare the value of the contract under analysis with the reference value contained in Cadterc. All contracts in which the price is above the market reference price are automatically put in evidence, with red highlighting, to all state government entities, facilitating the negotiation of contracts. In the services encompassed by Cadterc, the procuring unit has an obligation to negotiate with tenderers if the value is above the reference price, considered the ceiling for contracting; in other words, the procuring unit is forbidden from contracting for a value higher than the reference price. Unit prices of contracted services are also identified, serving as an instrument for price negotiation in reverse auctions of services. The aim of the state is to contract for a fair price, reflected in the reference price (H. J. Ferragino, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

The record of historic prices also helps the control institutions (the Office of the Prosecutor, the Court of Audit etc.). Cadterc includes 9,709 ongoing contracts in addition to 50,000 closed contracts. Service contracts amount to BRL19.3 billion per year, or about BRL450 million per month, creating about 100,000 direct and indirect jobs (H. J. Ferragino, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

### 3.2.2.2 Cadterc Studies

In turn, the Cadterc Studies on Services contain standards for contracting the services most relevant to the State Government. These studies serve as instruments to empower workers, as they reflect their demands. For example, the value of meal vouchers for employees of service providers is established by the studies, and labour unions have considered this value in their collective bargaining agreements. Currently there are 702 service items with the Socio-Environmental Label. Examples of the socio-environmental criteria included in the Cadterc studies are detailed below (H. J. Ferragino, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

#### TEXT BOX 4: CADTERC VOLUMES

Currently there are 17 volumes of technical studies on services in Cadterc (SEFAZ, n.d.A):

1. Provision of Property Surveillance and Security Services
2. Control, Operation, and Supervision of Buildings and Lobbies
3. Provision of Building Cleaning and Conservation Services
4. Provision of Staff Transport Services, under Continuous Charter Regime
5. Provision of Food and Nutrition Services for Prisoners
6. Food and Nutrition Services for Teenagers under State Tutelage and Served by *Fundação Casa* (a public foundation)
7. Provision of Hospital Cleaning Services
8. Provision of Hospital Food and Nutrition Services
9. Provision of Food and Nutrition Services for Public Servants and Employees
10. Provision of Hospital Laundry Services
11. Provision of Motorcycle Freight Services
12. Medicinal Gases
13. Provision of Electronic Surveillance Services
14. Provision of Corporate Printing and Reprographic Services
15. Provision of School Cleaning Services
16. Provision of Transport Services through Vehicle Rental
17. Provision of Vehicle Fuel Supply Management Services

The WG-2004 subgroup on General Services revised and adapted the Cadterc studies, which, since 2005, explicitly provide for environmental laws and socio-environmental criteria compatible with the state policy on sustainable development. The inclusion of these criteria did not affect the reference values, which establish acceptability limits for the procurement prices; rather, it is expected to provide cost savings through the reduction of input consumption. Technical specifications and contractual obligations were changed to include the following environmental sustainability parameters (D'Amico & Agune, 2007, pp. 11-14; SGP, 2011, pp. 7-8; CQGP, n.d.):

- Water savings: stimulus, when appropriate, to the direct or indirect reduction or the elimination of water consumption, particularly in the studies on building and hospital cleaning; suggestions of reusing water and of using water from alternative sources (rainwater or water from wells), as well as of partnerships to identify leaks;
- Energy savings and energy efficiency: institution of a contractual clause demanding energy efficiency certification of equipment used by service providers;
- Minimization of atmospheric pollution: mandatory use of vehicles using less polluting fuel (for example, ethanol) in the provision of services; institution of a service modality for surveillance using bicycles instead of motorized vehicles;

- Minimization of noise pollution: conditions for using equipment that could reach high levels of noise, thus causing hearing problems;
- Minimization of waste generation: measures such as programs of selective collection of waste and recycling, conditions for handling and disposing of hazardous waste, and instructions to increase the use of food ingredients in contracts involving the preparation of meals;
- Minimization of toxicity: discouragement of the use of chemical products, such as in the case of sanitizing products used in building cleaning services;
- Recommendations for the supply management of the service provider;
- Quantification of greenhouse gas emissions and identification of mitigation opportunities in the execution of services, to suggest changes in technical specifications and contract templates; and
- Training of state public servants through distance learning, to internalize these new concepts.

General social responsibility criteria are required from service providers as part of the standard specifications established by the Cadterc studies; there are no special specifications on social responsibility for each type of service. A few examples of social criteria can be mentioned (SGP, 2011, p. 7-8; D'Amico & Agune, 2007, p. 16):

- Mandatory provision of a basic basket of goods and meal vouchers to each service provider employee;
- Presentation of proof of payment of payroll taxes, employee benefits, and Social Security obligations;
- Compliance with federal, state, municipal, and internal standards of health and safety at work;
- Compliance with collective conventions or agreements of the professional categories involved in the provision of services;
- Proof of compliance with Ministry of Labour requirements;
- Acquisition of insurance against work accidents for service provider employees, taking responsibility for payroll taxes, Social Security obligations, and other tax and commercial duties resulting from the contract;
- Provision of appropriate uniforms for the activities, at no cost for the employees; and
- Prohibition of contracting suppliers that discriminate based on race, color, gender, or marital status.

For a more specific and in-depth analysis of the technical specifications of services regarding socio-environmental criteria, three studies encompassing diversified types of services were selected: Volume 3 on building cleaning, Volume 8 on hospital food, and Volume 16 on vehicle rentals.

Technical specifications about the object of procurement, based on the standard specifications listed in the corresponding Cadterc study, must appear in an annex to each tender, considered an integral part of the tender (see, for example, SGP, 2011a, p. 62). Among several technical specifications defining the services procured, comments follow on those geared towards the sustainability parameters with which service providers must comply.

### 3.2.2.2.1 Volume 3: Provision of Building Cleaning and Conservation Services

According to the Cadterc study, this volume encompasses all services aiming at obtaining the appropriate sanitation and hygiene conditions. The service provider provides labour, sanitizing products, materials, and equipment (SGP, 2011a, p. 7). Procurement of this type of service, categorized as a common service, must be carried out electronically under the reverse auction modality, pursuant to Sao Paulo State law (SGP, 2011a, p. 60).

In its initial socio-environmental instructions, the study drew attention to compliance with environmental legislation on disposing of polluting materials (such as batteries, fluorescent lamps, tires, and aerosol spray bottles). It also allows for cleaning with reused water or water from alternative sources (such as rainwater or water from wells, as long as the sources are free from contamination) (SGP, 2011a, p. 6).

The recommendations regarding water use are repeated in the description of the various items of the service, including internal and external areas, floors, laboratories, courtyards and green areas etc. In addition, in the case of courtyards, sidewalks, streets etc., the study determines that the cleaning shall be done only by sweeping and collecting waste, and prohibits cleaning with drinkable water, unless there is a proven need to clean goods that are contagious or otherwise harmful to health (SGP, 2011a).

General obligations and responsibilities include items pertaining to sustainability. For example, the service provider must comply with the laws and good practice codes on handling controlled chemical products and on using sanitizing products. The service provider must also “ensure that vehicles eventually involved in the rendering of services are fueled by energy sources that cause the least environmental impact”: ethanol, compressed natural gas or liquefied natural gas, or electricity (translation by author) (SGP, 2011a, p. 31).

There are 37 specific obligations and responsibilities for environmental good practices (3.24-3.60), which encompass rational use of water and electricity, reduction in the production of solid waste, use of sanitizing products, and noise pollution. The following are some obligations and responsibilities (SGP, 2011a, p. 31-36):

- *Environmental good practices:*
  - Maintaining an internal training program for employees to reduce electricity and water consumption and the production of solid waste;
  - Communicating maintenance events, such as leaks from faucets, siphons, and showers;
- *Rational use of water:*
  - Training employees on the use of water, optionally through an online program offered by Sabesp;
  - Avoiding the waste of treated water;
  - Adopting special and privileged criteria for purchasing and using equipment that reduces water consumption;
- *Rational use of electricity:*
  - Adopting special and privileged criteria for the purchase of energy-efficient, consumption-reducing products and equipment;
  - In night cleaning services, turning on the lights only in occupied areas;
  - Making sure curtains and blinds do not obstruct air conditioning vents;
- *Reducing solid waste production:*
  - Handing over to the government, to firms or appropriate establishments all batteries with lead, cadmium, mercury and their compounds, as well as fluorescent lamps, tires, and aerosol spray bottles, to be discarded, reused, recycled, treated, or disposed of;
  - Complying with the program of selective collection of waste, where such a program exists;

- Separating organic waste in the sweeping of parks, where there is a program for composting or producing organic fertilizer;
- Optimizing the size and use of garbage bags;
- *Sanitizing products:*
  - Adopting special and privileged criteria for the purchase and use of biodegradable products;
  - Rationally using sanitizing products, observing the criteria of lowest toxicity, absence of dyes, and reduction of sodium hypochlorite;
  - Adopting supplier qualification criteria considering their environmental performance;
  - Not using products forbidden by law or harmful to human health;
  - Using only products registered by the sanitary surveillance organ;
  - Observing the labels of sanitizing products;
  - Only using sanitizing products with biodegradable anionic surfactants;
- *Noise pollution:*
  - Observing the need for a Noise Label, in accordance with national norms;
  - Using technologies to reduce noise levels.

#### 3.2.2.2.2 Volume 8: Provision of Hospital Food and Nutrition Services

This volume comprises services for “ensuring balanced nutrition and in appropriate hygienic and sanitary conditions, encompassing the operation and development of all the activities of production, administration, and support to clinical and outpatient nutrition” (translation by author) (SGP, 2011c, p. 6). This is a common service, the procurement of which must be done by electronic reverse auction (SGP, 2011c, p. 123).

In the specific socio-environmental instructions of the study, the environmental good practices to reduce food waste and to make better use of food ingredients are worth highlighting, in addition to the common recommendations on the rational and efficient use of water and electricity (SGP, 2011c, p. 5). The concern that hospital menus are in line with the seasons of the year respects the seasonality of agricultural production, and thus contributes to the sustainability of the meals prepared (SGP, 2011c, p. 11).

The specific environmental good practices amount to five pages, in the areas of rational water use; energy efficiency; reduction in food waste and better use of food ingredients; selective collection of waste; biodegradable products; noise pollution control; and final destination of the waste resulting from oils used in frying and cooking. The following obligations and responsibilities of the service provider should be emphasized (in how they differ from the specifications in Volume 3, detailed above) (SGP, 2011c pp. 43–47):

- *Rational water use:*
  - Prohibition of water-wasting habits, such as peeling potatoes or washing leaves and vegetables while leaving the water running;
  - Adopting flow reducers in faucets;
  - Using faucet nozzles with a spray function;
  - Not using water to defrost food;

- *Energy efficiency:*
  - When acquiring equipment, making sure, whenever possible, that it has the label of the National Program of Electricity Conservation (*Programa Nacional de Conservação de Energia Elétrica—Procel*) and the Inmetro label;
  - Following Inmetro standards in electrical, gas, or vapour installations in state government facilities;
  - Periodically verifying the heating and refrigeration systems;
- *Reduction in food waste and better use of food ingredients:*
  - In developing menus, employing unusual parts of ingredients whenever possible;
  - Considering the use of recipes developed and tested by the Experimental Kitchen of the Service of Consumer Guidance of the State Government;
  - Preferring seasonal food;
- *Final destination of waste resulting from oils used in frying and cooking: creating and maintaining recycling programs for edible oil, reusing it in the production of soap, for example.*

### 3.2.2.2.3 Volume 16: Provision of Transport Services through Vehicle Rental

The last volume analyzed here comprises three types of transport services through the non-occasional rental of vehicles, aiming at transportation in support of administrative activities: (1) rental of vehicle with unlimited kilometrage, (2) availability of vehicle with driver, and (3) availability of vehicle with driver and fuel (SGP, 2011b, pp. 10, 26, 49). All three types are considered common services and are necessarily procured by electronic reverse auction (SGP, 2011b, pp. 20, 40, 63).

The specific socio-environmental guidelines in the study reinforce the legal requirements of using ethanol-fueled vehicles whenever possible and of fueling bi-fuel vehicles with ethanol, to the exception of vans, to be fueled preferably with biodiesel (SGP, 2011b, p. 7). Finally, the socio-environmental obligations and responsibilities of the service provider include (SGP, 2011b, pp. 15-16):

- Performing vehicle maintenance to minimize the emission of pollutants and complying with legal requirements regarding air quality and maximum levels of gaseous emissions; non-compliance with this requirement gives rise to the immediate replacement of the vehicle, under penalty of sanctions or contract termination
- Using technologies to improve the control of pollutant emissions
- Performing exhaust system maintenance, to ensure that vehicles do not cause noise levels above those acceptable under the law and technical standards
- Providing vehicles with catalytic converters or equivalent equipment
- Keeping an internal program of fleet maintenance monitoring
- Using vehicles moved by fuels with the lowest environmental impact possible
- Maintaining environmental good practices in the purchase and disposal of tires and in the management of waste from vehicle maintenance and cleaning

#### TEXT BOX 5: ECOFROTAS

##### **Ecofrotas: the company**

Ecofrotas (“Ecofleets”) is a Brazilian company with 11 years of experience in fuel supply management services, and with more recent experience in integral fleet management and in technical and environmental certification of vehicle maintenance shops. From 2009 onwards, Ecofrotas started to emphasize sustainability aspects. To seek and to stimulate the market to seek sustainable fleet management solutions, the company initially obtained ISO 9001 (quality management) and ISO 14001 (environmental management) certification for its management systems.

##### **Fuel supply management: GoodCard**

The most common product of Ecofrotas, with the most basic functionality, is GoodCard, a magnetic card used to pay for fleet fuel supply in accredited filling stations. GoodCard is connected to a fuel supply management system, which includes a registry of the drivers, vehicles, and fuel supply policies of the company that contracts the services of Ecofrotas. The fuel supply policies may include the type of fuel to be used, the maximum amount of fuel to be supplied per week, the maximum acceptable price, and the prohibition or allowance of fueling on weekends.

At each filling, fuel station employees record the type and price of the fuel supplied and vehicle kilometrage, among other information. The system does not accept entries, for any one vehicle, of kilometrage equal to or below the previous kilometrage informed. Any errors or instances of non-compliance with the fuel supply policies are recorded in the system, which does not allow payment. Based on these data, the system generates management and sustainability reports, made available on the website. The fleet manager may use these reports as a management tool.

The aim of the company is to generate value for the client through its accountability reports, incentivizing improvements in the quality of filling stations and presenting useful managerial information to fleet managers. In this sense, the company emphasizes socio-environmental responsibility, fleet maintenance, training for responsible driving, and concern for the health of drivers.

##### **Ecofrotas and the State Government**

In Sao Paulo, the company has contracts with the Military Police, Sabesp, the Penitentiary Administration Secretariat, the Treasury Secretariat, the Environment Secretariat, the University of Sao Paulo, among other public entities. After the publication of the study on the Provision of Vehicle Fuel Supply Management Services (Cadterc Volume 17), Ecofrotas had more security to contract with state public entities.

While Cadterc mandates companies rendering services to the State Government to use ethanol in their vehicles, the State Government itself is required to preferably acquire bi-fuel vehicles, but is not required to fuel them with ethanol. A consumption survey showed that the bi-fuel vehicles of the government were being fueled with gasoline, in particular by the Military Police. In this context, GoodCard has allowed greater savings and better fuel supply management (V. D’Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

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Most contracts have terms of up to 60 months and are restricted to the scope of Volume 17, thus not encompassing fleet maintenance. One notable exception is the Sao Paulo State University (Unesp), which entered into supply and maintenance contracts with Ecofrotas covering 40 units of the university throughout the state. To facilitate the contracting of sustainability consulting and intelligence services, of which the State Government is still a hesitant client, the company suggests the creation of a Cadterc volume on fleet maintenance or integral fleet management, setting aside the insecurity in contracting, and inspiring tenders to contract integral fleet management services.

Contracting the Ecofrotas intelligence services would allow the State Government to monitor performance of PEMC targets, simulating, for example, the emissions reductions generated by fueling all government vehicles with ethanol instead of gasoline. The fleet management statistics generated by the Ecofrotas system, once made available to the State Government, would consist of a tool to further improve transparency in public management and the quality of accountability at state level.

#### **Ecofrotas and the Sao Paulo Development Agency**

The Sao Paulo Development Agency, linked to the Treasury Secretariat, finances and coordinates the Green Economy program and provides a line of credit at reduced rates to support projects of SMEs to reduce greenhouse gas emissions by, for example, financing the replacement of fossil-fueled fleet with bi-fuel vehicles. In financings of this type, the Development Agency requires that financed vehicles shall be fueled with ethanol. The Ecofrotas management system thus ensures compliance with the contract, through a partnership between Ecofrotas and the Development Agency.

*This box was developed based on information obtained during an interview with Amanda Kardosh, Sustainability Relationship Manager of Ecofrotas, and Daniela Levendoschi, responsible for the sales of the company in the Public Market, at the Sao Paulo office of Ecofrotas, on May 31, 2011.*

### **3.2.3 Construction Works**

The procurement of construction works and engineering services is not standardized as the procurement of general goods and services. The work carried out by the Construction Works and Engineering Services subgroup of the WG-2004 focused on the adoption of sustainability criteria for the consumption of timber in public works. The activities of the WG-2004 included the following (D'Amico & Agune, 2007, pp. 15-16; CQGP, n.d.):

- Creation of the Legal Timber database: in partnership with the Institute of Technological Research (*Instituto de Pesquisas—IPT*), the item “timber” was identified in the database of the Sao Paulo Company for Construction Works and Engineering Services (*Companhia Paulista de Obras e Serviços—CPOS*), and alternatives were identified for its permanent or temporary use. The technical specifications that include timber as an input were revised and adapted to include sustainable alternatives, homogenized terminology, and procedures for the purchase and receipt of legal timber;
- Organization of events, with the participation of engineers involved in designing and monitoring State Government projects and works, to help in the botanical identification of the 20 types of timber most used in the state;

- Development of procedures to include specific clauses in tenders and contracts, providing for environmental monitoring and for the issuance of Environmental Compliance Certificates during the execution of construction works and engineering services, containing the requirements fulfilled, in process of fulfillment, and not fulfilled; and
- Development of a regulation for the State Decree that establishes environmental control procedures for the use of native timber products and subproducts in construction works and engineering services contracted by the State Government.

Thus, the Program covered in a restricted manner the sustainability aspects of construction works and engineering services contracted by the State Government. In this area, it is technically difficult to use the Socio-Environmental Label, applying it to specifications of construction works and engineering services, because there are many types of such works with their own technical specifications. The only sustainability initiatives applicable to construction works are Cadmadeira and the Legal Timber application, developed by IPT, which indicates the appropriate type of timber for each work, the price per cubic meter, among other relevant information (D. Cavalcanti, Environmental Planning Coordination, Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).<sup>3</sup>

### 3.3 Evaluating Proposals and Selecting the Supplier

After the preparation of the tender by the procurer, based on the guidance and the technical specification templates presented above, and after its approval by the legal department, the tender is published, starting the external phase of the procurement process. The next step is selecting the best proposal and the supplier, which is generally based on the best price, defined in the proposals or bids.

#### 3.3.1 Social and Environmental Sustainability

Socio-environmental sustainability criteria are not directly or explicitly included in this phase of the procurement process. There are at least three reasons for the SPP Program to be focused on the internal phase, rather than on the external phase. First, the selection of the best proposal (and, as a result, of the winning tenderer) must be exclusively made based on the price criterion, to dispel concerns about corruption. In addition, including socio-environmental considerations in this phase would yield a broad margin of subjectivity and discretion to the person in charge of the procurement process. Finally, considering the decentralized character of public procurement in the State Government, with more than 1,800 procuring units throughout the state, it is easier and more efficient to insert sustainability criteria in the technical specifications—which are standardized—than incentivizing their application in the phase of proposal evaluation and supplier selection of each procurement proceeding.

Nonetheless, there are cases in which the socio-environmental criteria of the Program are relevant in the evaluation and selection phase. For example, on the BEC/SP website there are at least 20 cases of appeals by companies against the qualification of competitor companies in procurement processes in the invitation modality. In these cases, according to the appealing parties, the goods of their competitors did not have the required FSC or Cerflor certification. The permanent procurement adjudicatory commission verified that the goods supplied by the competitors did not have either of the required certifications, and, thus, upheld the appeals, disqualifying the competitors (Secretaria da Fazenda do Estado de São Paulo (SEFAZ), n.d.B).

<sup>3</sup> The Legal Timber application is available at [http://www.governoemrede.sp.gov.br/ead/lictsustentavel/midioteca/MadeiraLegal\\_LicitSusten.mdb](http://www.governoemrede.sp.gov.br/ead/lictsustentavel/midioteca/MadeiraLegal_LicitSusten.mdb).

This example shows, first, that the Socio-Environmental Label is an incentive for the private sector to adapt to the sustainability requirements that the State Government has been adopting through its public procurement policy. It also shows that the socio-environmental criteria can improve competition among suppliers. Finally, it illustrates the importance of the electronic systems adopted by the State Government, in the sense that they ensure transparency, ethics, and legality in public procurement.

### 3.3.2 Economic Sustainability

If the social and environmental criteria of sustainability are mostly present in the internal or preparatory phase of procurement, it is in the phase of evaluating and selecting proposals that the economic aspect of sustainability appears most prominently. The reverse auction, especially when carried out electronically, and even though it is not a specific aspect of the SPP Program, must be analyzed in this context, as a critical aspect of the economic sustainability in the procurement processes of the State Government. The electronic reverse auction currently accounts for 98 per cent of the contracting of services and purchases of goods by state government entities (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, Aug. 3, 2011). Since the electronic reverse auction was first implemented in the State, it has saved about 20 per cent in procurement costs (see Table 2).

**TABLE 2. SAVINGS OBTAINED THROUGH REVERSE AUCTIONS**

YEAR	NUMBER OF REVERSE AUCTIONS CONCLUDED	REFERENCE VALUE* (BRAZILIAN REALS) A	NEGOTIATED PRICE (BRAZILIAN REALS) B	SAVINGS (BRAZILIAN REALS) C=A-B	SAVINGS (%) D=C/A
2003	4,179	1,255,103,734.86	1,087,502,769.08	167,600,965.78	13.35
2004	13,209	5,098,309,642.03	4,166,629,825.00	931,679,817.03	18.27
2005	16,955	8,478,826,946.68	6,596,163,598.43	1,882,663,348.25	22.20
2006	19,724	7,317,840,855.24	5,844,091,836.94	1,473,749,018.30	20.14
2007	19,394	7,797,400,207.00	6,238,988,237.89	1,558,411,969.11	19.99
2008	21,768	9,642,026,322.87	8,030,844,127.79	1,611,182,195.08	16.71
2009	23,336	10,896,123,950.93	8,576,974,314.66	2,319,149,636.27	21.28
2010	23,485	11,349,342,421.79	9,166,638,938.15	2,182,703,483.64	19.23
2011**	14,931	10,886,594,781.75	8,578,891,375.38	2,307,703,406.37	21.20
<b>Total**</b>	<b>156,981</b>	<b>72,721,568,863.15</b>	<b>58,286,725,023.31</b>	<b>14,434,843,839.83</b>	<b>19.85</b>

Source: [http://www.relogiodaeconomia.sp.gov.br/br/pregao\\_resultados.asp](http://www.relogiodaeconomia.sp.gov.br/br/pregao_resultados.asp).

N.B.: Current values. \*The Reference Value indicates the expense to be made, established for budgeting purposes and used to open a procurement process, regardless of the modality; that is, it is the maximum value that the State Government is willing to pay for certain common goods or services. The reference unit prices are obtained through (1) market research carried out directly and under the responsibility of the procuring unit, and (2) reference service price parameters, published by the Office of the Chief of Staff. \*\* Status on September 5, 2011.

### 3.3.3 Advantages of the Reverse Auction

Allied to the other technological innovations in public management, the reverse auction allows the State Government, through the reduction in the subjectivity of procurement processes, to control corruption and obtain significant savings. Some of the advantages of the reverse auction are listed below (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, Aug. 3, 2011):

- **Inversion of the qualification and evaluation phases.** In the reverse auction, the qualification phase, in which the tenderer attests to the fulfillment of certain legal conditions and requirements to sign the contract, occurs after the competitive phase and the evaluation of proposals. Since only the winning tenderer is subject to the qualification phase, the procurement process is expedited and its transaction costs are reduced.
- **Greater objectivity and fewer opportunities for corruption** in public procurement and contracting, since in reverse auctions the criterion adopted is always that of best price.
- **Shorter period between tender publication and contract formalization.** The tender publication period is shorter, and the procurement process as a whole is faster. While traditional procurement processes usually take at least 30 days, a reverse auction can be concluded in 15 days.
- **Simplifying the procurement process stimulates expediency, competition, and the participation of SMEs** in public procurement.
- Using online systems that record all that happens during the procurement process—supplier accreditation, proposals, negotiation with the auctioneer, and appeals—allows the public to follow and monitor the proceedings in real time, leading to increased **transparency** in procurement.
- The electronic reverse auction promoted an **increase in the quality of its complementary systems**, such as Cadfor, Cadmat, and Cadterc.

### 3.4 Managing Suppliers and Contracts

As in the technical specifications of goods, services, and construction works, the State Government has also adopted socio-environmental responsibility criteria in the management of suppliers and contracts. This occurs specially through the monitoring of the performance of public contracts and through the application of administrative sanctions in cases of non-compliance (see, for example, SGP, 2011, p. 65, clause 2.4).

In the performance of public contracts, the public party must ensure that the private party complies with its legal and contractual obligations. For this purpose, the public party must monitor compliance with the socio-environmental requirements included in the tender (for example, technical specifications of goods, services, and construction works) and in contract clauses (such as those relating to compliance with labour law and social security obligations). Transparency in contract performance is also important, in order for competitors and society as a whole to participate in monitoring the performance of public contracts (D'Amico & Agune, 2007, p. 17). In this sense, for example, the Cadterc studies provide for the submission and evaluation of periodical reports on the quality of services rendered, including with respect to compliance with environmental specifications (see, for example, SGP, 2011c, p. 156).

In case a public entity verifies, in monitoring a contract, non-compliance with legal or contractual obligations, it must apply penalties on the private party. The administrative sanctions provided for by the Public Procurement Law, the Law on Environmental Crimes, and the Reverse Auction Law allow the State Government to exclude from public procurement and contracting the professionals and companies that do not comply with socio-environmental norms or specifications (see Section 2).

The electronic sanctions record system ([www.sancoes.sp.gov.br](http://www.sancoes.sp.gov.br)) publicizes the administrative sanctions applied to natural and legal persons, forbidding them from contracting with any organ or entity within the State Government. Therefore, it contains the supplier and service provider “blacklist,” with the following information about them: name or company name, CNPJ or CPF number, the origin and file number of the administrative proceeding in which the decision to sanction was rendered, the duration of the sanction, and its legal grounds. There are currently more than 700 natural or legal persons listed in the record system (SGP, n.d.B).

#### TEXT BOX 6: SABESP

##### Sabesp: The company and its procurement processes

The Basic Sanitation Company of Sao Paulo State (Sabesp), a mixed-capital company controlled by the State Government, is Brazil's largest basic sanitation company (accounting for about 30 per cent of the domestic market) and one of the largest in the world. The standards developed and the technical specifications used by Sabesp serve as guidance for the Brazilian basic sanitation market. In 2010, its contracts reached BRL3 billion, mostly in construction works and engineering services. This shows that "Sabesp's purchasing power can influence and even define markets that promote sustainable development" (translation by author) (A. M. S. Mendes, Superintendent for Supplies and Strategic Contracting, Basic Sanitation Company of Sao Paulo State, personal communication, June 2, 2011).

The socio-environmental criteria of the SPP Program are included in Sabesp's procurement specifications. Sabesp does not use the BEC/SP system; it has its own catalog for its purchases, because of the specificity of the goods acquired by the company (pipes, fittings, water meters, materials for sewage treatment etc.). There are 259 items with the Socio-Environmental Label in Sabesp's catalog. In addition, another 412 were submitted to the Environment Secretariat for analysis. By incorporating the BEC/SP database into its own, Sabesp should end up with 700 labelled items. In Sabesp, the preferred acquisition of items with the Socio-Environmental Label is a rule, unlike other state public entities.

##### Sustainability in Processes and Production Methods: Pre-Qualification

Sabesp acknowledges that it needs to ensure the quality of suppliers of goods considered strategic (certain types of pipes, valves, pumps etc.). For this purpose, in addition to good technical specifications, the company has innovated in the procurement area by requiring the pre-qualification of manufacturers and suppliers, to verify whether they comply with international, domestic, or Sabesp standards.

Sabesp's focus is on pre-qualifying class A goods, which are most in demand (100 items accounting for about 70 per cent of the value procured by Sabesp per year). The pre-qualification process is permanently open; it is not specific per procurement process. At any time, a supplier may request pre-qualification. The process starts with the completion of a request, in accordance with Sabesp's Qualification Normative Guidelines. Its socio-environmental criteria include compliance with environmental permit requirements, proper disposal of waste resulting from the production process, waste reuse or recycling programs, and the organization of social activities in the community.

An on-site factory inspection follows. Specialized employees of Sabesp visit the production plants of the producers, and carry out a technical evaluation of their entire production process, from the raw materials to the output, including the treatment and appropriate disposal of waste. The evaluation criteria encompass several items, such as the quality control system and the socio-environmental sustainability initiatives. The company's score in these criteria determines whether or not the product should be pre-qualified or approved, receiving a certificate of technical compliance.

The pre-qualification process is rigorous: a Danish company, for example, while in compliance with all European technical standards, took two years to revise its production process, adapt it to the Brazilian standards, and receive Sabesp's pre-qualification.

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In public procurement and contracting, it is common for the public manager to fear that “the cheap comes out expensive.” Since public entities typically procure for the lowest price, there is a risk that goods and services at excessively low cost have equally low quality and, thus, result in losses for the government.

Through pre-qualification, Sabesp only selects suppliers whose quality Sabesp itself has already evaluated. Thus, it ensures the quality of the procured goods, eliminating the risk of receiving low quality goods and more easily accepting the lowest price. The purchase price, thanks to the pre-qualification, reflects the *fair price*, which promotes competition among suppliers. In addition, pre-qualification induces the market to raise the quality standards. Finally, it benefits suppliers with a certificate of technical compliance, since they can use the document to enhance their access to the basic sanitation market. Other Brazilian basic sanitation companies have been requiring, in their tenders, the certificate of technical compliance issued by Sabesp.

### **Social Sustainability: Fighting Slave Labour**

Sabesp had a negative experience that led to an improvement in the social sustainability criteria adopted in its tenders. The company had been purchasing cast iron from a supplier from the State of Minas Gerais, at internationally competitive prices. However, the Federal Ministry of Labour received a complaint that a company from the State of Tocantins that supplied coal to Sabesp’s cast iron supplier kept workers under conditions analogous to those of slaves. Sabesp’s supplier’s supplier entered the Ministry’s slave labour blacklist.

Up until then, Sabesp had already included in its template tenders the requirement of a declaration that the supplier or service provider did not keep workers under conditions analogous to those of slaves. However, based on the incident, the declaration required by Sabesp in the template now encompasses the entire supply chain. Therefore, a direct supplier of Sabesp can be held liable if slave labour is verified at any point of its supply chain. The sanction eventually applied to this supplier would be publicized on the Sanctions website ([www.sancoes.sp.gov.br](http://www.sancoes.sp.gov.br)), forbidding the supplier from contracting with state public entities.

### **Rationalizing Procurement: Improvements in stock management**

In December 2007, Sabesp’s stock was valued at BRL223 million. Many of the goods acquired and in stock were not in use and had no prospect of being used by the units that purchased them. Beyond indicating that the purchases should never have occurred, keeping the goods in stock was expensive to Sabesp, which had to pay for storage and maintenance costs.

Realizing the need to reduce purchasing and to avoid the accumulation of unnecessary stock, Sabesp created a computerized system to improve stock management. Every day, the system verifies the date of the last change in status of the materials in stock. If the status of a material has not changed for more than six months, a virtual stock is created. The material ceases to be exclusively available to the Sabesp unit that purchased it; any Sabesp unit becomes entitled to request it. Furthermore, the system records the code of the material and blocks the possibility of its purchase by the procuring units.

Thus, Sabesp avoids expenses on materials already acquired by the company and not in use. From BRL223 million in December 2007, the value of Sabesp’s unused inventory was reduced to BRL121 million in March 2011. This evidences a reduction in consumption and in waste, in line with sustainability goals.

*This box was developed based on information obtained during an interview with Álvaro Manuel Santos Mendes, Superintendent for Supplies and Strategic Contracting of Sabesp, and Valeria D’Amico, of the Sanitation and Water Resources Secretariat, in the Administrative Complex Ponte Pequena of Sabesp, on June 2, 2011.*

## 4.0 Education and Awareness

Awareness activities are important aspects of any government program aiming at promoting deep changes in the mindset and management style of public servants. Acknowledging this, the SPP policy of the State Government encompasses the training and qualification of public servants, so that they internalize and apply what they learn on SPP in their specific activities for the State Government (Ferragino & D'Amico, 2009, p. 7; D'Amico & Agune, 2007, p. 18).

The Administrative Development Foundation (*Fundação do Desenvolvimento Administrativo—Fundap*), linked to the Public Management Secretariat, initiated a distance learning course on SPP for public servants in January 2009. The course aims to train public servants to implement actions in the area of sustainable consumption within state government entities. Distance learning was regarded as appropriate for such a large and geographically scattered environment with a qualitatively diverse target public (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

Through the use of resources from the Public Management Secretariat, the course was offered free of charge to 2,600 public servants from various areas of the State Government (including secretariats, agencies, foundations, public companies, and mixed-capital companies), whether or not involved with public procurement and contracting activities (D'Amico, 2010, p. 7; Ferragino & D'Amico, 2009, p. 7; CQGP, n.d.).

The course was conducted entirely over the Internet. To fulfill the proposed activities, it was recommended that participants reserve one hour per business day (five hours per week), completing the course in three months (60 hours) (D'Amico, 2010, p. 7; Ferragino & D'Amico, 2009, p. 7; SGP & Fundap, n.d.A). Final certification of the course was optional, through the study of all modules and the active participation in the Virtual Learning Community (VLC) with the submission of meaningful messages of technical content over three months (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

Each course module was developed by a team of specialists in the area, from various institutional affiliations within and outside the State Government, all trained by Fundap to develop the pedagogical materials of the course (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

The course was structured in seven themed modules, each dealing with the following main topics (SGP & Fundap, n.d.A):

1. **Environmentally sustainable contracting:** the importance of responsible consumption; impacts caused by consumption that fails to take socio-environmental criteria into account; institutional consumers; and SPP processes.
2. **Legal aspects:** international initiatives; the government as a responsible consumer in the contracting of goods, services and construction works; SPP; legislation.
3. **Provision of services:** the state's purchasing power as an instrument for promoting sustainable development; sustainability in the procurement and contracting of services; socio-environmental criteria adopted by the State Government; management of contracts for the provision of services.

4. **Purchase of goods:** conscious consumption and SPP; instruments to evaluate the “degree of sustainability” of goods; the State Government and SPP.
5. **Construction works and engineering services:** sustainable development and the role of the government as an inducer; sustainable construction, product life cycle and environmental performance; the role of public procurement as a strategic step; examples and application recommendations; implementation strategies and possibilities.
6. **Social responsibility:** concepts of the business chain and stakeholders; appearance and growth of social responsibility; forms and areas of social responsibility; the State as an inducer of social responsibility.
7. **Environment, society, and sustainability:** relationships among the concepts of environment, ecology, and natural resources, and the importance of these concepts for SPP; a retrospective of the United Nations conferences that highlight the socio-environmental dimension of the human-nature relationships; recommendations of the Agenda 21 (Rio de Janeiro, 1992) and of the Johannesburg Declaration (2002) and their relationship with the Socio-Environmental Label and the SPP Program.

#### TEXT BOX 7: RESOURCES AND ACTIVITIES OF THE COURSE ON SPP

For each course module, the following resources and activities are available (Ferragino & D’Amico, 2009, p. 7; SGP & Fundap, n.d.A):

- **Content:** the “title page” of the module, indicating its authors and contents, as well as the number of exercises, of complementary activities and of pages in the booklet;
- **Topic:** summary introduction to the topics dealt with in the module;
- **Notes:** presents the main topics and concepts of the module;
- **Exercises:** at least 10 multiple-choice questions for review of the contents, and model answers with commentaries;
- **Complementary Activities:** indicates theoretical or practical examples on the contents of the module, through additional exercises and research activities, problem solving exercises, legal texts, videos or film clips, and newspaper articles;
- **Research:** recommends specialized literature, and suggests websites relevant to the topic of the module;
- **Know More:** is the booklet of the module, with 30 to 40 pages, dealing with the contents in a detailed way; it may be printed out by the participants for private use and for non-commercial purposes;
- **VLC:** is the space in which the participants may interact, exchanging information and presenting problems and solutions; it fulfills a secondary goal of the course, namely, creating a virtual community of public servants interested in discussing practical questions related to SPP.

Other resources, common to all modules, are the **media library**, a virtual library that includes legislation and academic literature, and the **vocabulary**, with technical definitions of the main terms used in the course.

**Philosophy of the course.** The intention of the course was not to provide technical tools, but to promote change and internalization of concepts and paradigms. The participants did not need to know how to technically compare the sustainability of goods, which is a task that falls upon the technical organs, such as the Environment Secretariat and Cetesb. Rather, the course strived to inform about the importance of the SPP Program and the SPP Commissions (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

**Emphasis on the VLC.** Most distance learning courses use the broadcast approach, which does not allow any kind of interaction between students, but which can reach a large number of them. This approach is based on the tutorial model, in which information is organized following a particular pedagogical sequence and presented to the participant under this sequence. Its goal is to store, represent, and, most importantly, transmit information. For Fundap, however, the broadcast approach is not a suitable model of training, as it is limited by the lack of interaction between teacher and students. The Course on SPP sought to benefit from the various learning styles and preferences of the participants, combining different dynamics for the presentation of the module contents: graphs, images, text, films and case studies etc. (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

An important aspect of the course, in order not to limit it to the broadcast approach, was to include a platform allowing interaction between participants in a virtual environment: the VLC, divided into technical or formal forums to discuss course contents, and informal forums to promote interaction among participants. In this network, there were technical mediators who were specialists in the topics discussed, in addition to pedagogical mediators, who were not SPP specialists, but who had experience in education. While the teachers monitored the interactions in the formal forums, the pedagogical mediators supervised the informal forums (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

This virtual environment allows participating public managers to answer questions regarding not only the contents, but also their daily problems, motivating the search for network-built solutions. Participants start as “beginners”; after they post 20 relevant messages in the technical forum, they become “applied students”; after 70, “collaborators”; finally, after 100, they become “collaborators-mediators.” During and even after the course, participants were motivated and trained to become VLC collaborators (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

In the first edition of the course, in 2009, there were over 50,000 interactions among participants in the VLC. Based on the interactions in the technical forums, the most interesting questions were collected (information management) and published in the “questions and answers” area of the virtual environment. Thus, new participants were instructed to study matters already discussed. The interesting questions represented a management tool of the course, as they served as vehicles for suggestions and recommendations. Many participants also suggested SPP-relevant materials for inclusion in the media library, after validation by the team of teachers (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

**Mario Covas Prize.** In 2008, Fundap received the Governor Mario Covas Prize, which aims at promoting good practices in public management, for its project that promoted the use of a VLC to facilitate collaboration and knowledge exchanges in the public health area (Prêmio Mario Covas, 2008). In 2009, Fundap was listed as a finalist for the same prize, having presented the Course on SPP as a project. The project description available online provides more details about the innovative character of the course (Prêmio Mario Covas, 2009).

## 5.0 *Lessons Learned: Improvement and expansion*

The previous sections presented the political, institutional, legal, operational, and educational aspects of the SPP policy of the Sao Paulo State Government. The State Government has advanced with commendable success in its efforts to make the state's purchasing power a catalyst of sustainable development quickly and with limited resources. There are several examples of these advancements, including: overcoming challenges regarding the legal feasibility of the SPP policy; the increasing demand for items with the Socio-Environmental Label in Cadmat; and the inclusion and systematic update of socio-environmental criteria in the Cadterc studies.

### TEXT BOX 8: SAO PAULO SPP POLICY: KEY FACTORS

- Inclusive Design: The Sao Paulo SPP Policy was not designed through top-down decrees issued by the Executive Branch. Instead, it was developed through a process that valued the opinions of public servants and the participation of several state government entities.
- Incorporation of a host of development aims: Moving beyond the core aim of reducing environmental impacts, the SPP Policy aims to use the State's purchasing power as a tool to promote regional development, non-discrimination, small and medium enterprises (SMEs), entrepreneurship, innovation, public health, and management efficiency.
- Political support from the highest levels of government.
- Long-term commitment of the State public servants and all other actors.

At the same time, considering that the SPP policy is a young initiative, there are still challenges to be overcome and opportunities for improvements and expansion to be discovered and seized. Such challenges and opportunities are evident, for example, in the climate change area. The State Government has been finding it difficult to take a path that allows it to achieve the target of a 20 per cent reduction in greenhouse gas emissions by 2020, as established by the PEMC. Indeed, from 2005 to 2010, the emissions in the State of Sao Paulo increased by 7.5 per cent. For the goal to be achieved, the state's development policy will have to be reoriented. It will also be necessary to focus on adaptation actions (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011). However, climate change brings not only challenges, but also opportunities, such as that of emphasizing and increasing the use of SPP as an instrument of the paradigm shift required by the need to reduce emissions.

This final section provides an overview of the lessons learned throughout the process of design and implementation of the SPP policy in the State Government. The identification of challenges and potential opportunities aims at guiding the development of plans to improve the policy internally, as well as to publicize the experience of the State Government as a model to be followed—with necessary changes being made—by other Brazilian states and developing countries.

## 5.1 Accountability

The State Government tracks the performance of the SPP policy in a standardized way through annual reports prepared by the various state organs and entities, as provided by the State Decree that instituted the SPP Program. The report is a management tool useful for organizing information, facilitating accountability, and improving the transparency and comparability of the performance indicators created. The SPP Program has published, based on the various reports,<sup>4</sup> the first compiled report, covering the period 2008-09 (SMA, 2010, pp. 5, 10).

From 2008 to 2009, the percentage of the transactions involving items with the Socio-Environmental Label over the total number of purchases by the State Government increased from 16.03 per cent to 24.15 per cent, considering only the 14 groups of goods assessed by the Environment Secretariat for purposes of awarding the label. On the other hand, considering the total number of goods purchased by the State Government, the percentage of sustainable purchases was 2.13 per cent in 2008, increasing to 3.33 per cent in 2009 (SMA, 2010, p. 40). Although these percentages are low, it should be borne in mind that there are a relatively small number of goods with the Socio-Environmental Label (fewer than 400 items). It would be interesting to evaluate the percentage of sustainable purchases over the total value of purchases rather than over the number of goods or transactions.

The Treasury Secretariat, in its role as administrator of the state finances, is also concerned with measuring the benefits of the SPP policy and communicating them to society. Accountability in economic terms is part of its routine work. However, in sustainability matters, the secretariat has faced the challenge of being accountable in terms of the cost-benefit relationship, in order to justify, based on socio-environmental benefits, higher immediate costs. Such cost-benefit accountability needs to be further developed; for example, through the presentation, side by side, of economic and socio-environmental costs of the products acquired by the State Government, or at least for frequently purchased goods. That exercise could help in the process of convincing society to push the State Government to carry out SPP (M. F. A. Ferreira, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

For items containing the Socio-Environmental Label, this concern does not currently have practical importance, because the items in the BEC/SP catalog that were awarded the label already existed in the catalog, and because the Treasury Secretariat itself has not seen an increase in the immediate costs incurred by the State Government because of the inclusion of the label. Nonetheless, an accountability tool comparing the immediate cost with the effective cost (taking into account socio-environmental variables) would allow the government to justify eventual higher expenditures in the procurement of goods or services of superior socio-environmental quality (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011; M. F. A. Ferreira, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

<sup>4</sup> The compiled report comprises the reports by the following State Government organs and entities: Agriculture and Supply Secretariat, Sao Paulo Company of Metropolitan Trains (Companhia Paulista de Trens Metropolitanos—CPTM), Airway Department of the State of Sao Paulo (*Departamento Aeroviário do State of Sao Paulo—Daesp*), Metropolitan Urban Transportation Company of Sao Paulo S.A. (*Empresa Metropolitana de Transportes Urbanos de São Paulo S.A.—EMTU*), Higher Education Secretariat, Treasury Secretariat, Foundation for Education Development (*Fundação para o Desenvolvimento da Educação—FDE*), Institute of Medical Assistance to the State Public Servant (*Instituto de Assistência Médica ao Servidor Público Estadual—Iamspe*), Land Institute of the State of Sao Paulo “José Gomes da Silva” Foundation (*Fundação Instituto de Terras do State of Sao Paulo “José Gomes da Silva”—Itesp*), Environment Secretariat, Company of the Metropolitan of Sao Paulo (Companhia do Metropolitano de Sao Paulo—Metrô), Office of the Attorney General of the State of Sao Paulo, Economy and Planning Secretariat, Technical-Scientific Police, Basic Sanitation Company of the State of Sao Paulo (Sabesp), Sanitation and Energy Secretariat, Penitentiary Administration Secretariat, Health Secretariat, Social Assistance and Development Secretariat, Public Safety Secretariat, Military Police of the State of Sao Paulo, Public Management Secretariat, Sao Paulo Social Security (*São Paulo Previdência—SPPrev*), Transportation Secretariat, Metropolitan Transportation Secretariat, Agricultural Economics Institute (*Instituto de Economia Agrícola—IEA*), Culture Secretariat, Zoological Park Foundation.

Government officials have highlighted the need for a study that technically justifies SPP. At times, public managers responsible for procurement, although motivated to choose the most sustainable alternative, do not have the technical knowledge to identify it among several options that meet the same government need—for example, facing the choice between disposable paper towels and hot-air hand driers; or between china mugs and disposable cups. An official technical study that offered public servants credible guidance on the sustainability criteria to be adopted in procurement processes would help address that concern. This study would also be useful for purposes of accountability to society and to other government organs, allowing the public servant to fight criticisms aimed at the SPP policy (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011; M. F. A. Ferreira, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

## 5.2 Specifications of Goods

Once the initial legal discomfort regarding the awarding of the Socio-Environmental Label to items of goods in the BEC/SP catalog was overcome, the support of the State Government and its public servants to the label, demonstrated by the increase in the purchases of labelled goods, shows that the label is a positive and effective instrument of the SPP Program. It is possible to think of at least three ways to better use the potential offered by the label: establishing a rule of preference for the purchase of labelled goods, expanding the number of labelled items, and employing life cycle analysis in the procedure for awarding the label.

There are discussions within the Public Management Secretariat on the development of a rule to determine the preferential purchase of goods with the Socio-Environmental Label. If approved, all state government organs and entities, facing various options of goods capable of meeting a government need, would be required by law to include in the tender the option containing the label, if available (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communications, May 30-31, 2011).

Increasing the number of items with the Socio-Environmental Label and using life cycle analysis in the procedure for awarding the label are matters intrinsically related to the technical, budget, and human resource capabilities of the Environment Secretariat to carry out the assessment of the items of goods in Cadmat. As pointed out above, only four public servants from the Environment Secretariat perform this assessment, a low number that shows the limitations faced by the organs conducting the SPP Program.

In response, the SPP Commissions could be trained to develop technical specifications of goods, so that each state government organ and entity would be able to analyze the list of goods and to suggest those that should be awarded the Socio-Environmental Label. Another idea, to be implemented in an alternative or complementary manner to the first one, would be to contract a consulting firm to carry out the evaluation of the entire BEC/SP catalog (D. Cavalcanti, Environmental Planning Coordination, Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

Finally, an even closer collaboration between the Environment Secretariat and Sabesp could contribute to increasing the number of labelled items and to adopting a full life cycle analysis in the procedure for awarding the label. Sabesp has its own catalog of goods (outside the BEC/SP catalog), which includes items that have socio-environmental sustainability characteristics, but which have not yet been awarded the label. These items have already been submitted for analysis to the Environment Secretariat, which should forward those approved to the Treasury Secretariat for inclusion in the BEC/SP catalog with the Socio Environmental Label. Thus, the integration of the catalogs of Sabesp and BEC/SP, at least with respect to the items to be labelled, should be beneficial to SPP in the State Government as

a whole (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011). In addition, Sabesp's experience in supplier pre-qualification, if integrated into the SPP Program and gradually expanded to other state government organs and entities, would contribute to increasing the coverage of the life cycle stages analyzed for purposes of awarding the label.

### 5.3 Specifications of Services

A strength of the SPP Program is the inclusion of socio-environmental requirements in the technical studies on services of Cadterc, which encompass all class A services, the most commonly contracted by the State Government. The quality work developed by the secretariats involved in the implementation of the SPP Program should continue, in order to increase the number of service types covered by the Cadterc studies.

A plan currently under evaluation is the creation of a study on integral fleet management services (see, for example, Text Box 5 on Ecofrotas) (H. J. Ferragino, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, June 1, 2011). Another challenge is the incentive to purchase organic food and to contract nutritional services that use organic food in school canteens and in prisons, for example (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

### 5.4 Specifications of Construction Works

As seen in the previous sections, the SPP Program does not focus on sustainability aspects in procurement and contracting of construction works and engineering services. This is because of the technical difficulty of using the Socio-Environmental Label for these works, and because of the variety and specificity of technical specifications. Indeed, bringing construction and engineering into the SPP Program is one of the biggest challenges to be discussed and dealt with in the realm of the SPP Policy (M. F. A. Ferreira, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

To make it easier to emplace socio-environmental criteria in public procurement and contracting into the area of construction works and engineering services, the State Government is developing the State Program of Sustainable Construction (*Programa Estadual de Construção Civil Sustentável*—PECCS), which follows the pattern of the SPP Program, including with respect to the requirement of reports. The Environment Secretariat coordinates a working group with a mandate to draft a resolution containing the program guidelines, encompassing both new construction works and existing buildings (retrofit). The working group includes representatives from the construction sector, in order to enhance the legitimacy of the initiative. The draft resolution will be submitted to the Managing Committee of the PEMC for analysis and opinion. Once the State Program of Sustainable Construction is formalized, a specific portal will be created for the program, publicizing all applicable legislation, examples of good practices, and tender templates, in the same style as the Cadterc Studies on Services (D. Cavalcanti, Environmental Planning Coordination, Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

## 5.5 Socio-Environmental Responsibility of Suppliers

Ensuring that suppliers and service providers are socio-environmentally responsible throughout their production processes is a shortcoming of the SPP Program. The State Government, because of technical, legal, and administrative limitations, can only have a restricted view, still in the procurement phase, about the profiles of the contracted suppliers and service providers (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011). It is difficult to carry out a deeper analysis, based on a life cycle analysis, because the State Government does not have the technical capacity to analyze the production process of all the contracted suppliers and service providers; thus, it chooses the goods and services with the least environmental impact which are available in the market (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

To remedy this shortcoming, the State Government is including in tenders (and in the draft contract that is an integral part of the tender) a requirement of declarations that the supplier or service provider does not employ slave labour, complies with labour laws, supplies meal vouchers to its employees, properly disposes of waste, etc. Officials involved in the SPP Program have hopes in the plan of carrying out, in the entire State Government, the pre-qualification of suppliers, based on Sabesp's experience and contribution (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, May 30, 2011; M. F. A. Ferreira, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).<sup>5</sup>

## 5.6 Contract Monitoring and Management

In the area of contract monitoring and management, the services covered by Cadterc serve, once again, as a model to be followed. Performance of procurement processes and contracts based on the Cadterc studies counts on the managerial monitoring by the Gati and the on-site supervision by Internal Affairs. Thus, in these contracts it is relatively easier to monitor compliance with socio-environmental requirements and to enforce them (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

The difficulty is in the management of lower cost services, which are included in the general registry of services, but not in Cadterc. These contracts involve local and procuring unit specificities. The items of these services are very generic, and that they are detailed in the tenders. In this context, each procuring unit has the responsibility to determine the socio-environmental criteria to be adopted, based on guidance by the SPP Commissions; thus, ensuring compliance with socio-environmental requirements becomes much more difficult (F. L. Mota, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, May 31, 2011).

From the point of view of the Chief Environmental Attorney, the most important shortcoming of the SPP Program is not in the legal norms, but in the contract monitoring and management. According to the norms governing the Program, public servants in the procurement area are responsible for managing the contract and must oversee its performance, applying the appropriate sanctions to suppliers or service providers. However, the low number of public servants and the lack of appropriate training of many of them weaken contract monitoring and management (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

<sup>5</sup> See Text Box 6 on Sabesp in Section 3.4 for more information about the supplier pre-qualification process.

The State Government does not provide manuals with contract management guidelines or training programs for contract managers, but opens the possibility of their creation by the

SPP Commissions or by the Public Management Secretariat (SGP & Fundap, n.d.B). Designing management manuals could help remedy this shortcoming of the SPP Program, especially if combined with an education and training program for public servants on sustainable contract management.

## 5.7 Information Exchange and Dissemination

The experience of the State Government in the area of SPP, if appropriately publicized, has the potential of benefiting municipal and state governments throughout Brazil or even governments in other developing countries. Furthermore, a greater exchange of information with other subnational and national governments that have SPP policies could further improve the SPP Program of the State of Sao Paulo.

The State Government has already been sharing its experiences in international and domestic forums. For example, the State Government is involved in international forums on public management, generally, or on SPP policies, specifically, such as the MTF-SPP. It also participates in conferences in various countries in Latin America and in events held by the Latin American Center of Administration for Development (*Centro Latino-Americano de Administração para o Desenvolvimento*—CLAD). Another example is that the Gati has organized, through formal agreements or without them, training events in other Brazilian states, such as Acre, Amazonas, Bahia, Minas Gerais, Pernambuco, and Rio Grande do Norte. Through these training programs, the Gati has had opportunities to transfer know-how, to present its good practices, to disseminate concepts and strategies, as well as to convince public managers and public procurers of the importance of the computerized management system that formed the basis of the SPP policy in the State of Sao Paulo (H. J. Ferragino, Coordination of Decentralized Entities and Electronic Contracting, Treasury Secretariat, Sao Paulo State Government, personal communication, June 1, 2011).

State Attorney Sílvia Nascimento suggests that the State Government should exchange more information with other states and municipalities. The State Government could, for example, combine its SPP databases with those of the Federal Union, to expand the number of technical specifications including sustainability criteria. In addition, it could establish a public policy of actively seeking agreements on SPP with municipalities. According to the State Attorney, public resources already spent in research and projects in the area of SPP at state level should be shared with the Federal Union and the municipalities (S. H. N. Nascimento, Office of the State Attorney-General and Environment Secretariat, Sao Paulo State Government, personal communication, May 30, 2011).

In the field of education and training, the State Government, through Fundap and the secretariats involved with the SPP Program, has worked on updating and expanding the contents of the Course on SPP. The new edition of the course will have a larger number of modules, encompassing more advanced topics pertaining to SPP, such as cleaner production, effective cost, energy expenditure, needs assessment, and choice of goods and items (V. D'Amico, Sanitation and Water Resources Secretariat, Sao Paulo State Government, personal communication, June 1, 2011). To enable the update currently in progress and to address the lack of resources, an online payment system was created. Each participant will need to pay BRL200 to acquire the course materials and to gain access to the network (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

The course will also be adapted so that it can be taught throughout Brazil. For that purpose, relevant experiences in SPP of other states and of the Federal Union will be taken into account; in turn, the emphasis on the State Government will be reduced. Finally, Fundap plans on translating the contents into Spanish and on including experiences of other Latin American countries, so that the course can be used by partners of the State Government in Argentina, Chile, Uruguay, and other countries in the region (T. M. T. G. Silva, Administrative Development Foundation, Public Management Secretariat, São Paulo State Government, personal communication, June 1, 2011).

## References

- Biderman, R., Valente de Macedo, L. S., Monzoni, M., & Mazon, R. (Eds.). (2007). *Guia de compras públicas sustentáveis: Uso do poder de compra do governo para a promoção do desenvolvimento sustentável*. Retrieved from [http://www.cqgp.sp.gov.br/gt\\_licitacoes/publicacoes/Guia-de-compras-publicas-sustentaveis.pdf](http://www.cqgp.sp.gov.br/gt_licitacoes/publicacoes/Guia-de-compras-publicas-sustentaveis.pdf).
- Bonafé, M. A. (2006). Pregão e registro de preços. In J. E. M. Cardozo, J. E. L. Queiroz, & M. W. B. dos Santos (Eds.), *Curso de Direito Administrativo Econômico*, v. II (734-61). São Paulo: Malheiros.
- Comissão Europeia. (2005). *Comprar ecológico! Manual de contratos públicos Ecológicos*. Retrieved from [http://ec.europa.eu/environment/gpp/pdf/buying\\_green\\_handbook\\_pt.pdf](http://ec.europa.eu/environment/gpp/pdf/buying_green_handbook_pt.pdf). English version available at [http://ec.europa.eu/environment/gpp/pdf/buying\\_green\\_handbook\\_en.pdf](http://ec.europa.eu/environment/gpp/pdf/buying_green_handbook_en.pdf).
- Comitê de Qualidade e Gestão Pública do Estado de São Paulo (CQGP). (n.d.). Apresentações. In *Licitações sustentáveis*. Retrieved from [http://www.cqgp.sp.gov.br/Grupos\\_tecnicos/gt\\_licitacoes/apresentacoes/todas.htm](http://www.cqgp.sp.gov.br/Grupos_tecnicos/gt_licitacoes/apresentacoes/todas.htm).
- Complementary Law No. 123. (2006, Dec. 14). Federative Republic of Brazil.
- D'Amico, V. (2010, Mar. 15-17). Desenvolvimento sustentável: Poder de compra. *III Congresso Consad de Gestão Pública*, Retrieved from <http://www.consad.org.br/sites/1500/1504/00001877.pdf>.
- D'Amico, V., & Agune, R. M. (2007, Oct. 30-Nov. 2). A experiência do Governo do Estado de São Paulo—Brasil na implantação de compras públicas sustentáveis. *Compras públicas sustentáveis: O novo desafio para a Administração Pública. XII Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administración Pública*, Santo Domingo, República Dominicana.
- Decree No. 41,629. (1997, Mar. 10). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 42,836. (1998, Feb. 2) as amended by Decree No. 48092. (2003, Sept. 18). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 45,085. (2000, July 31). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 45,643. (2001, Jan. 26). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 45,695. (2001, Mar. 5). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 47,297. (2002, Nov. 6). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 48,138. (2003, Oct. 7). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 48,326. (2003, Dec. 12). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 48,405. (2004, Jan. 6). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 48,999. (2004, Sept. 29). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 49,674. (2005, June 6). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 49,722. (2005, June 24). State of Sao Paulo, Federative Republic of Brazil.
- Decree No. 50,170. (2005, Nov. 4). State of Sao Paulo, Federative Republic of Brazil.

Decree No. 51,469. (2007, Jan. 2). State of Sao Paulo, Federative Republic of Brazil.

Decree No. 53,047. (2008, June 2). State of Sao Paulo, Federative Republic of Brazil.

Decree No. 53,336. (2008, Aug. 20). State of Sao Paulo, Federative Republic of Brazil.

Decree No. 54,010. (2009, Feb. 12). State of Sao Paulo, Federative Republic of Brazil.

Decree No. 54,229. (2009, Apr. 13). State of Sao Paulo, Federative Republic of Brazil.

Decree No. 54,704. (2009, Aug. 21). State of Sao Paulo, Federative Republic of Brazil.

Decree No. 55,947. (2010, June 24). State of Sao Paulo, Federative Republic of Brazil.

Department for Environment, Food and Rural Affairs (DEFRA). (2006). Procuring the future Sustainable Procurement National Action Plan: Recommendations from the Sustainable Procurement Task Force. Retrieved from <http://www.defra.gov.uk/publications/files/pb11710-procuring-the-future-060607.pdf>.

European Commission. (2011). Buying green! A handbook on environmental public procurement. 2nd Edition. Retrieved from <http://ec.europa.eu/environment/gpp/pdf/handbook.pdf>

European Commission. (2012). Public procurement for a better environment. Retrieved from [http://ec.europa.eu/environment/gpp/gpp\\_policy\\_en.htm](http://ec.europa.eu/environment/gpp/gpp_policy_en.htm)

Federal Constitution. (1988, Oct. 5). Federative Republic of Brazil.

Ferragino, H. J., & D'Amico, V. (2009). Contratação de serviços terceirizados—Inclusão de critérios socioambientais com foco em mudanças climáticas—Programa Estadual de Contratações Públicas Sustentáveis do Governo de São Paulo. XIV Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administración Pública, Salvador, Bahia, Brasil.

Hanks, J., Davies, H., & Perera, O. (2008, May). Sustainable public procurement in South Africa. Retrieved from [http://www.iisd.org/pdf/2008/spp\\_south\\_africa.pdf](http://www.iisd.org/pdf/2008/spp_south_africa.pdf)

Hoang, T. X., Do, A. H., & Perera, O. (2009, June). Procurement preparedness assessment in Vietnam: A reference to the timber industry. Retrieved from [http://www.iisd.org/pdf/2011/spp\\_vietnam.pdf](http://www.iisd.org/pdf/2011/spp_vietnam.pdf)

Joint Resolution SGP/SF/SMA/SSRH No. 1. (2011, May 3). Public Management Secretariat; Treasury Secretariat; Environment Secretariat; Sanitation and Water Resources Secretariat, State of Sao Paulo, Federative Republic of Brazil.

Justen Filho, M. (2010). *Comentários à Lei de Licitações e Contratos Administrativos*. Sao Paulo: Dialética.

Kingdom of Belgium. (2012). *Federal policy*. Retrieved from <http://www.gidsvoorduurzameaankopen.be/?q=en/node/105>

Law No. 6544. (1989, Nov. 22). State of Sao Paulo, Federative Republic of Brazil.

Law No. 6938. (1981, Aug. 31). Federative Republic of Brazil.

Law No. 8429. (1992, June 2). Federative Republic of Brazil.

Law No. 8666. (1993, June 21). Federative Republic of Brazil.

Law No. 9605. (1998, Feb. 12). Federative Republic of Brazil.

Law No. 10,176. (2001, Jan. 11). Federative Republic of Brazil.

Law No. 10,218. (1999, Feb. 12). State of Sao Paulo, Federative Republic of Brazil.

Law No. 10,520. (2002, July 17). Federative Republic of Brazil.

Law No. 10,761. (2001, Jan. 23). State of Sao Paulo, Federative Republic of Brazil.

Law No. 12,187. (2009, Dec. 29). Federative Republic of Brazil.

Law No. 12,349. (2010, Dec. 15). Federative Republic of Brazil.

Law No. 13,121. (2008, July 7). State of Sao Paulo, Federative Republic of Brazil.

Law No. 13,798. (2009, Nov. 9). State of Sao Paulo, Federative Republic of Brazil.

Law No. 14,185. (2010, July 13). State of Sao Paulo, Federative Republic of Brazil.

Legal Opinion CJ/SMA No. 683/2006. (2006). Legal Advisory, Environment Secretariat, State of Sao Paulo, Federative Republic of Brazil. Retrieved from [http://www.cqgp.sp.gov.br/gt\\_licitacoes/noticias/p-683-06\\_licitacao\\_sustentavel.pdf](http://www.cqgp.sp.gov.br/gt_licitacoes/noticias/p-683-06_licitacao_sustentavel.pdf).

Marrakech Task Force (MTF). (2011, Apr.). *Training on the MTF approach to SPP*, April 11-15, 2011, Freiburg im Breisgau, Germany.

Motta, C. p. C. (2006). Treze anos de aplicação da Lei Nacional de Licitações e Contratos. In J. E. M. Cardozo, J. E. L. Queiroz, & M. W. B. dos Santos (Eds.), *Curso de Direito Administrativo Econômico*, v. II (641-704). Sao Paulo: Malheiros.

Norwegian Ministry of the Environment; Norwegian Ministry of Children and Equality; & Norwegian Ministry of Government Administration and Reform. (2007). *Environmental and social responsibility in public procurement (sustainable public procurement)*. Retrieved from [http://www.regjeringen.no/Upload/MD/Vedlegg/Planer/T-1467\\_eng.pdf](http://www.regjeringen.no/Upload/MD/Vedlegg/Planer/T-1467_eng.pdf)

Organisation for Economic Co-operation and Development (OECD). (2012). *Greener public purchasing*. Retrieved from [http://www.oecd.org/document/21/0,3343,en\\_2649\\_34281\\_37414933\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/21/0,3343,en_2649_34281_37414933_1_1_1_1,00.html)

Penz, C. (2004, June). Pregão reduz preços e agiliza as compras. *Revista SP.GOV*, year 1, no. 1. Retrieved from [http://www.revista.fundap.sp.gov.br/revista1/eficiencia\\_administrativa.htm](http://www.revista.fundap.sp.gov.br/revista1/eficiencia_administrativa.htm).

Perera, O., Chowdhury, N., & Goswami, A. (2007). *State of play in sustainable public procurement*. Retrieved from [http://www.iisd.org/pdf/2007/state\\_procurement.pdf](http://www.iisd.org/pdf/2007/state_procurement.pdf)

Prêmio Mario Covas. (2008). *Roteiro de apresentação do relatório descritivo*. Retrieved from [http://www.premiomariocovas.sp.gov.br/2009/2008/Arquivos\\_2008/vencedores\\_inovacao/inovacao\\_comunidade.doc](http://www.premiomariocovas.sp.gov.br/2009/2008/Arquivos_2008/vencedores_inovacao/inovacao_comunidade.doc).

Prêmio Mario Covas. (2009). *Curso On-line de Licitação Sustentável: Compromisso do Governo do Estado de São Paulo com as futuras gerações*. Retrieved from [http://www.premiomariocovas.sp.gov.br/2009/2009/Inovacao\\_%20semifinalistas/inov\\_294.doc](http://www.premiomariocovas.sp.gov.br/2009/2009/Inovacao_%20semifinalistas/inov_294.doc).

Provisional Measure No. 2026. (2005, May 4). Federative Republic of Brazil.

Provisional Measure No. 495. (2010, July 19). Federative Republic of Brazil.

Republic of Ireland. (2012). *Green public procurement (GPP)*. <http://www.environ.ie/en/Environment/SustainableDevelopment/GreenPublicProcurement>

Resolution CC-52. (2005, July 19). Office of the Chief of Staff, State of Sao Paulo, Federative Republic of Brazil.

Resolution CC-53. (2004, June 30). Office of the Chief of Staff, State of Sao Paulo, Federative Republic of Brazil.

Resolution SF-15. (2007, Mar. 19). Treasury Secretariat, State of Sao Paulo, Federative Republic of Brazil.

Secretaria da Fazenda do Estado de São Paulo (SEFAZ). (n.d.A). Estudos. In *Cadernos Técnicos de Serviços Terceirizados (Cadterc)*. Retrieved from <http://www.cadterc.sp.gov.br/estudos>.

Secretaria da Fazenda do Estado de São Paulo (SEFAZ). (n.d.B). Visualizar impugnação edital. In *Bolsa Eletrônica de Compras*. Retrieved from <http://www.bec.sp.gov.br/publico/asp/recursosOc.aspx?nroOc=080258000012009OC00017&chave=> <http://www.bec.sp.gov.br/publico/Aspx/recursosOc.aspx?nroOc=090113000012009OC00006&chave=>, <http://www.bec.sp.gov.br/publico/Aspx/recursosOc.aspx?nroOc=090122000012009OC000068&chave=>, among others.

Secretaria da Fazenda do Estado de São Paulo (SEFAZ). (n.d.C). Catálogo Socioambiental. In *Bolsa Eletrônica de Compras*. Retrieved from [http://www.bec.sp.gov.br/BEC\\_Catalogo/CatalogoPesquisaSocioambiental.aspx](http://www.bec.sp.gov.br/BEC_Catalogo/CatalogoPesquisaSocioambiental.aspx).

Secretaria de Gestão Pública do Estado de São Paulo (SGP). (n.d.A). Apresentação. In *Sanções Administrativas*. Retrieved from <http://www.sancoes.sp.gov.br/apresentacao/apresentacao.htm>.

Secretaria de Gestão Pública do Estado de São Paulo (SGP). (n.d.B). Sanções por tipo. In *Sanções Administrativas*. Retrieved from [http://www.aplicacao.sancoes.sp.gov.br/sccf040600.nsf/sancoes\\_tipo?OpenView&Start=1&Count=100&Expand=3#3](http://www.aplicacao.sancoes.sp.gov.br/sccf040600.nsf/sancoes_tipo?OpenView&Start=1&Count=100&Expand=3#3).

Secretaria de Gestão Pública do Estado de São Paulo (SGP). (2011b, May). *Volume 16: Prestação de serviços de transporte mediante locação de veículos*. Retrieved from [http://www.cadterc.sp.gov.br/usr/share/documents/Volume%2016%20Loca%E7%E3o\\_2011\\_v2FINAL.pdf](http://www.cadterc.sp.gov.br/usr/share/documents/Volume%2016%20Loca%E7%E3o_2011_v2FINAL.pdf).

Secretaria de Gestão Pública do Estado de São Paulo (SGP). (2011c, June). *Volume 8: Prestação de serviços de nutrição e alimentação hospitalar*. Retrieved from [http://www.cadterc.sp.gov.br/usr/share/documents/VOL8AlimHospitalar\\_09082011.pdf](http://www.cadterc.sp.gov.br/usr/share/documents/VOL8AlimHospitalar_09082011.pdf).

Secretaria de Gestão Pública do Estado de São Paulo (SGP) & Fundação do Desenvolvimento Administrativo (Fundap). (n.d.A). *Curso de Licitação Sustentável*. Retrieved from <http://www.governoemrede.sp.gov.br/ead/lictsustentavel/index.htm>.

Secretaria de Gestão Pública do Estado de São Paulo (SGP) & Fundação do Desenvolvimento Administrativo (Fundap). (n.d.B). Questões interessantes. In *Curso de Licitação Sustentável*. Retrieved from [http://www.governoemrede.sp.gov.br/ead/lictsustentavel/faq/faq\\_resp.htm#m1\\_resp1](http://www.governoemrede.sp.gov.br/ead/lictsustentavel/faq/faq_resp.htm#m1_resp1).

Secretaria de Planejamento e Desenvolvimento Regional do Estado de São Paulo. (2011). *Evolução das receitas do Estado*. Retrieved from [http://www.planejamento.sp.gov.br/noti\\_anexo/files/planejamento\\_orcamento/](http://www.planejamento.sp.gov.br/noti_anexo/files/planejamento_orcamento/)

orcamentos/2011/lei\_orcamentaria\_v2011.swf.

Secretaria do Meio Ambiente do Estado de São Paulo (SMA). (n.d.). *Ecoproductos: Cadastre seu ecoproducto*. Retrieved from <http://www.ambiente.sp.gov.br/wp/cpla/politicas-publicas/consumo-sustentavel/ecoproductos>.

Secretaria do Meio Ambiente do Estado de São Paulo (SMA). (2010). *Programa Estadual de Contratações Públicas Sustentáveis: Relatório 2008/2009*. Retrieved from <https://sites.google.com/site/comprassustentaveis/noticias/1orelatoriodecontratacoespublicassustentaveisdoestadodesaopaulo/Relatórioconsolidado.pdf>.

Summula TCE/SP No. 17. (2005, Dec. 19). Court of Audit (TCE/SP), State of Sao Paulo, Federative Republic of Brazil.

The Energy and Resources Institute (TERI). (2008, Aug.). *Sustainable public procurement: Towards a low-carbon economy*. Retrieved from [http://www.iisd.org/pdf/2008/spp\\_india.pdf](http://www.iisd.org/pdf/2008/spp_india.pdf)

United Nations Environment Programme (UNEP). (2011). *The Marrakech Process*. Retrieved from <http://esa.un.org/marrakechprocess/tfsuspubproc.shtml>.

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