
Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco

As Universidades Públicas Federais e a política de tratamento diferenciado às micro e pequenas empresas no Estado de Pernambuco

Antônio de Souza Cavalcante¹ 

Nadi Helena Presser² 

Francisco de Sousa Ramos³ 

DOI: [10.22478/ufpb.2525-5584.2023v8n1.63098]

Recebido em: 16/05/2022

Aprovado em: 25/02/2023

Abstract: This paper shows the behaviour of three federal universities of the state of Pernambuco with regard to the application of differentiated, favoured and preferential treatment to micro/small businesses, during the public procurement of goods, services and works. More specifically, this work identifies the origin of micro/small businesses; sets out the amount of value that was contracted by local micro/small businesses, as well as by those based outside the state of Pernambuco; calculates the number of financial resources that were obtained by bidding, both for suppliers characterized as micro/small businesses, as well as for companies of other sizes. This is a descriptive and documentary research. Data were collected from the administrative records stored on the Purchasing Portal of the Federal Government. Descriptive statistics was used as the main method for data analysis and processing. The results show that, in the three analysed universities, the prerogative granted to micro/small businesses has not yet been widely implemented. The total amount of approved purchases of the three universities was R\$ 249,6 million); however, only 25% was contracted by micro/small businesses, while 75% was contracted by companies of other sizes. Moreover, of the 1,118 micro/small businesses that were contracted, 818 (73%) were headquartered outside the state of Pernambuco and only 311 (27%) were headquartered in the state. These results instigate a research agenda on the implementation of public policies.

¹ Universidade Federal Rural de Pernambuco – E-mail: acavalcante11@gmail.com.

² Universidade Federal de Pernambuco – E-mail: nadihelena@uol.com.br.

³ Universidade Federal de Pernambuco – E-mail: ramosfs@gmail.com.

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*

Keywords: Government procurement; Micro companies; Small businesses; Public policy; Federal Universities.

Resumo: Este artigo mostra o comportamento de três universidades federais do Estado de Pernambuco na aplicação do tratamento diferenciado, favorecido e preferencial às MEs/EPPs (microempresas/empresas de pequeno porte) nas contratações públicas de bens, serviços e obras. Pesquisa descritiva quanto aos fins e documental quanto aos meios. Os dados foram coletados dos registros administrativos armazenados no Portal de Compras do Governo Federal. Utilizou-se a estatística descritiva como principal método de análise e tratamento dos dados. Os resultados mostram que, nas três universidades analisadas, a prerrogativa concedida às MEs/EPPs ainda não foi amplamente implantada. Do valor total de R\$ 249,6 milhões em compras homologadas pelas três universidades, 75% foram contratados de empresas de outros portes e apenas 25%, de MEs/EPPs; das 1.118 MEs/EPPs contratadas, 818 (73%) eram sediadas fora do Estado de Pernambuco e somente 311 (27%) eram sediadas no estado. Estes resultados instigam uma agenda de pesquisa sobre a implementação de políticas públicas.

Palavras-chave: Compras governamentais; Microempresas; Empresas de pequeno porte; Políticas públicas; Universidades Federais.

1. Introduction

In Brazil, the legislation has elected the bidding process as the means of undertaking public procurements. More precisely, the bidding process is an administrative procedure that allows the government and its entities to acquire products and services with equal opportunities among those wishing to contract with the public sector, reflecting the best choice from among the universe of suppliers. Bidding processes require the government and the bidding parties to adhere to the standards and conditions stipulated in the invitation for bids (bid notice). Nothing can be created or gets done unless it is provided for in the invitation for bids instrument. So, participation is open to any interested parties who, in the initial qualification phase, provably possess the minimum qualification requisites stipulated in the bid notice.

The types of bidding processes are usually defined in the light of the amount of the future contract and/or the complexity of the subject matter, with the exception of the live bidding system chosen on account of the goods or services to be procured. Thus, the modality to be used is determined according to the “value” of the bidding process (competitive selection, request for price quotes, invitation) or to the “subject matter” being tendered for (competitive selection, tender offer, auction and live bidding).

Government (or public) procurement has been a global economic highlight given the huge volume of resources involved therein, and Brazil is no exception.

The sums involved are huge and account for a significant portion of the Gross Domestic Product (GDP) of many Brazilian municipalities. According to the Brazilian Government Procurement Panel, in 2018 total public procurement was R\$ 61 billion, representing 135,479 procurement processes of which 41.7% were contracted with micro and small businesses identified here as MEs/EPPs (micro/small businesses).

The role of the MEs/EPPs in developing local economic potential since the Federal Constitution of 1988 has come in for a lot of attention and there has been emphasis on affording them priority inclusion in public procurement. But it was in 2006, under Supplementary Law 123 of December 14, 2006, that the differentiated and favoured treatment afforded to MEs/EPPs in regard to participation in public bidding processes became enshrined in Brazil. In this way, besides establishing the National ME/EPP Statute and creating new limits on gross revenues for qualification as an ME/EPP and Individual Micro Entrepreneur (MEI), section 47 of Supplementary Law 123 of December 2006, stipulates that:

In public procurements by direct and indirect government departments, autonomous entities, foundations and federal, state and municipal governments, differentiated and simplified treatment must be afforded to micro and small companies in order to promote the economic and social development within municipal and regional boundaries, enhancing the efficiency of public policies and encouraging technological innovation. (Supplementary Law 123, 2006).

However, this law created general and comprehensive rules and regulations, leaving it up to the federative entities to draw up specific rules to render it applicable. Thereafter, Supplementary Law 147 of August 7, 2014, modified the original wording to include a sole paragraph stipulating that in the absence of state or municipal legislation or specific regulations federal legislation applies.

However, several issues contained in that law still required regulation by the Executive Branch. That is why Decree 8.538 of October 6, 2015 regulated the granting of benefits as well as the mandatory items in the invitation for bids instruments and the obligations of the bidders which is fact made it possible to expand or at least facilitate the participation of MEs/EPPs in public procurements.

Supplementary Law 123 of December 14, 2006 also defines the size of the companies according to the following amounts: a) micro companies include businesses

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*

with gross invoicing of up to R\$ 360,000.00; b) in the case of small companies, gross revenues exceeding R\$ 360,000.00 and equal to or less than R\$ 4,800,000.00. Thus the gross invoicing criterion becomes the defining factor of the target audience of this policy.

Although laws and decrees are not construed as public policies, they are part of a legal framework, in this case in regard to MEs/EPPs, that have enabled governments to create public policies by applying differentiated and favourable treatment where participation in public bidding processes is concerned. This differentiated treatment is founded on a constitutional provision which, because it involves antitrust law, establishes favouritism for MEs/EPPs organized under Brazilian law and whose principal place of business and management are located here. Participation by MEs/EPPs in formulating, monitoring and evaluating this public policy is enshrined in the very law that institutes it. Nevertheless, it is also an approach to local development, generating and increasing government revenues that can revert in the improvement of public services and in social action programs.

Therefore, the objective of this paper is to analyse the differentiated treatment afforded to MEs/EPPs in public procurements of goods, services and works at the federal, state, district and municipal government level guaranteed under federal law. The *locus* of analysis is three federal universities located in the State of Pernambuco (PE), in Brazil's North-eastern Region: the Federal Rural University of Pernambuco (UFRPE), the Federal University of Pernambuco (UFPE) and the Vale de São Francisco Federal University (UNIVASF). The period of analysis was confined to 2018.

Thus, the objective of this article is to illustrate the behaviour of the UFRPE, UFPE and UNIVASF in applying the differentiated, favoured and preferential treatment afforded to MEs/EPPs in the public procurement of goods, services and works. More specifically, the objectives are: a) to identify the places of origin of the MEs/EPPs contracted; b) to define the amount contracted with local suppliers and suppliers based outside the state of PE; c) to calculate the volume of financial resources obtained by suppliers characterized as ME/EPP and by companies of other sizes per procurement modality.

This study meets the two fundamental elements of a public policy, as argued by Secchi (2010): public intentionality and response to a public problem. In other words, the reason for setting up a public policy is to deal with or solve a problem understood to be communally relevant. In other words, the financial resources of the federal public

universities enjoy legal support to be invested to the maximum in the region where the universities are based. This aspect represents the response to a public intentionality (Secchi, 2010) and if complied with, makes the UFRPE, UFPE and UNIVASF leading players in regional development by fostering job creation, income distribution and the creation of value essential for the economic and social development of the region.

Regarding the response to the public problem, as argued by Secchi (2010), one has to bear in mind that Pernambuco is a state with huge regional inequalities that require a variety of public policies in order to improve the conditions of the less developed regions, where the use of purchasing power is one of these strategies. The three universities operate throughout the entire State of Pernambuco and are also present in several states in the North-eastern Region through teaching, research and extension activities. So, the public problem is characterized by the inequalities in regional development; public policy means differentiated treatment in public procurement processes for MEs/EPPs in order to foster the participation of regional companies in procurement processes issued in the region itself.

It should be pointed out that in spite of the focus being on the three federal universities of the state of Pernambuco, the analysis presented herein can apply to other states, given the important role of the issue discussed for local development, with an overflow effect.

2. Public policies, implementation and evaluation

Public policies, according to Miguel (2018), are state actions implemented using programmes intended for specific sectors of society “under the mantle of the sovereign authority of the government.” (Rodrigues, 2010, p. 14). This requires “political players capable of pinpointing and analysing the social, economic and reality they live in, in addition to negotiating in a democratic manner with the different players involved in the process.” (Rodrigues, 2010, p. 25).

Melazzo (2010) synthesizes the concepts of various players when asserting that:

Public policies are sets of decisions and actions intended to solve political problems involving formal, informal and technical procedures that express the relationships of power and which are intended to resolve conflicts involving both the rights of social groups and segments, or how the space in which different concepts are disputed regarding the formulation and implementation of social rights, as well as their extension to other social groups. (Melazzo, 2010, p. 19).

According to the definition by Melazzo (2010), for a public policy to exist it must be intermediated by the government, in the case specifically demonstrated here, and it the federal universities' function to make it part of their operating agenda.

The implementation of public policies, according to Lotta (2019, p. 13), is “a part of the field of public policy analysis that seeks to look at the specific moment when the policies materialize or come into being.” In other words, it is the process of successive refinement and its translation into specific tasks and procedures intended to render the thinking behind the policy effective. Likewise, the purpose of evaluating and gathering information, therefore, is action-oriented, points out Thoenig (2000). Notwithstanding the extensive usefulness of the information provided by any kind of evaluation processes, this is a somewhat underutilized practice. For the purposes of this study, also worthy of note is the evaluation of public policies in which a program already implemented is analysed in regard to its actual impacts over a given period.

But, coming back to the question of implementation, as Hill and Hupe (2003) see it, if the study aims to explain in some way the difference between the objectives specified in the initial phase of a public policy and a product or end result, attention needs to be paid to the characteristics of the players required to interact and to the structured relations between them. Some players can be more essential for transforming policies than others, and this may require quite different methodological approaches depending on the nature of those relationships. However, “the problems of implementation arise especially from the difficulty in generating the necessary cooperation between the implementation players.” (Oliveira & Couto, 2019, p. 75), and in federal systems such as the universities, Oliveira and Couto (2019) suggest trying to reconcile the wish of the central leadership with that of the various implementation authorities that are always to be found within federations.

The public policy of the Brazilian Government that grants preference to micro and small companies was designed with public procurement as the main instrument. The important role of the State as a consumer of goods and services catalyses the potentiality of using this mechanism. And what is more, the special role of MEs/EPPs is emphasized as generators of an important number of jobs and of the economy as a whole (Karjalainen & Kempainen, 2008 as cited in Costa & Terra, 2019). Small businesses are also characterized as the “gateway” for those entering the jobs market for the first (the Brazilian Support Service for Micro and Small Businesses (SEBRAE, 2018).

The key benefits afforded by Supplementary Law 123 (2006) to MEs/EPPs are: a) the stipulation of a quota of up to 25% in contests for the acquisition of goods of a divisible nature (Section 48, subsection III); b) Priority in contracting locally- or regionally-based MEs/EPPs, up to the limit of 10% of the best valid price (Section 48, paragraph 3).

The benefits listed above point to the emphasis of the legislation on aspects involving benefits during the procurement process. In this process, it is the remit of the government to define the public policy, ensuring that MEs/EPPs receive differentiated and favourable treatment. It is now up to the universities and other public institutions to put the public policies defined into practice. For that reason, federal government functionalism is an essential element in the proper execution of the guidelines adopted by the government. However, the extent to which the universities have been engaged in the formulation and mobilized in the implementation of this policy is an aspect to be taken into account. Above all, there is a belief that the constitutional autonomy of universities, its effective application and the limits imposed on it must be factored into the analyses.

Cruz (2017) points out that the analyses of the data from the government's purchasing portal demonstrate that of the total value of the procurement by the Federal Government in 2017 approximately 56.04% was acquired via bidding waiver processes or non-requirement of bid tenders; of that total, only 1.82% was channelled to MEs/EPPs. Bidding waiver occurs when although competition is viable and, therefore, theoretically the procurement process is possible, the legislation allows a waiver in exceptional situations. Non-requirement of bidding processes occurs when the item has only one supplier or when the item is unique, or where a unique service or professional is involved. In these cases, a bidding process is out of the question as it will be impossible to compare the situations in order to obtain parameters that clearly show which situation is more favourable to the government, although section 25 of Law 8.666 of June 21, 1993 provides a list of examples. Nevertheless, each actual case must be examined, as there may be situations not covered in that section but which, given their characteristics, would result in the non-requirement of a bidding process.

According to Law 8.666 (1993), the bidding process is when: a) the acquisition of materials, equipment or the like can only be from an exclusive producer, company or sales representative, with brand preference prohibited (section 25, I); b) recognized

specialization characterized by a differentiated, atypical or unique service (section 25, II) of if the contractor possesses in-depth knowledge and/or involvement and is specialized in that specific area, holds above-average qualifications compared to the professionals in that industry; c) contracting of artistes of any sector on the grounds of the professional's recognition by specialized critics or public opinion.

Bearing in mind the disbursement and volume of resources and their importance in the country's economy, Costa and Terra (2019) stress that public procurement in Brazil goes beyond the cost-effectiveness of the process. As the authors see it, this procurement process must be analysed not only from the point of view of its legality and cost-effectiveness: one must verify, in addition to these principles, whether the proposal meets the strategic aim of improving government budget management in order to further the country's economic and social development.

3. Methodological precedures

This study is characterized as descriptive in its purposes, having presented information about specific situations of MEs/EPPs in PE in order to identify the possibility of them being actively engaged in the procurement processes of the UFRPE, UFPE and UNIVASF as beneficiaries of differentiated and preferential treatment.

In addition, it is a documental study about investigative methods, as it has drawn on formal information systems of the Brazilian federal government and procurement reports of the UFRPE, UFPE E UNIVASF as key data gathering sources.

The data were gathered from the administrative records stored on the purchasing portal of the Brazilian Government:

- a) The Integrated General Services Management System (SIASG).
- b) The Integrated Financial Administration System (SIAFI).
- c) The Unified Supplier Registration System (SICAF).

Data were also specifically collected from the UFRPE's own records by reading physical documents such as: Bidding Waiver Processes, Terms of Reference, Goods Specification Terms, Proceeds Allocation Documents and Bid Notices.

The main method for analysing and dealing with the data collected was descriptive statistics. The total resources contracted from MEs/EPPs by the UFRPE, UFPE and UNIVASF in fiscal year 2018 was quantified per procurement modality. Of this total, we identified and calculated the volume of resources contracted with MEs/EPPs

whose head offices are outside the State of PE and the resources contracted with MEs/EPPs with their head offices in the State.

4. Purchases by teaching institutions of Pernambuco attached to the Ministry of Education and the participation of MEs/EPPs

The Brazilian Government Procurement Panel indicated that both in purchases approved by federal institutions attached to Ministry of Education in Brazil at national level, and within the exclusive scope of the State of PE in fiscal year 2018, MEs/EPPs had a low share if compared to companies of other sizes (Table 01).

Table 01: Participation of micro/small businesses in procurements approved by institutions attached to the Ministry of Education

| National Coverage | Amount (R\$) | Percentage (%) |
|--|-------------------|----------------|
| All federal institutions attached to the Ministry of Education | 61.080.473.841,04 | 100,0 |
| Companies of other sizes (also including special companies) | 45.901.976.091,54 | 75,1 |
| MEs/EPPs | 15.178.497.749,50 | 24,8 |
| National Coverage | Amount (R\$) | Percentage (%) |
| Institutions headquartered exclusively in the State of PE | 349.845.419,60 | 100,0 |
| Companies of other sizes (also including special companies) | 219.896.398,45 | 63,0 |
| MEs/EPPs | 129.949.021,11 | 37,0 |

Source: 2018 Procurement Panel data. Prepared by the authors.

The total amounts shown in Table 01 include all bidding modalities in procurements legally available for contracting and their respective characteristics, including their exceptions, such as waivers and the non-requirement of bidding processes.

After discovering the volume of procurements, we investigated which bidding modalities were contracted in procurements approved by institutions attached to the Ministry of Education, as well as the volume contracted with MEs/EPPs and companies of other sizes in each modality (Table 02).

Table 02: Participation of micro/small businesses by procurement modality during 2018

| Procurement modality | MEs/EPPs (R\$) | (%) | Companies of Other Sizes (R\$) | (%) | Total (R\$) |
|----------------------|----------------|------|--------------------------------|------|----------------|
| Bidding Waivers | 7.210.355,64 | 11,0 | 60.054.152,04 | 89,0 | 67.264.507,68 |
| Live bidding | 111.973.969,53 | 49,0 | 118.415.703,17 | 51,0 | 230.389.672,70 |

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*

| | | | | | |
|--------------------------------|-----------------------|-------------|-----------------------|-------------|-----------------------|
| Price Submissions | 5.233.957,62 | 100,0 | - | - | 5.233.957,62 |
| Competitive selection | 3.483.938,43 | 10,0 | 32.631.645,07 | 90,0 | 36.115.583,50 |
| Bidding process | - | - | 260.000,00 | 100,0 | 260.000,00 |
| Non-requirement of bid tenders | 2.046.799,89 | 19,0 | 8.534.898,17 | 81,0 | 10.581.698,06 |
| Total | 129.949.021,11 | 37,0 | 219.896.398,45 | 63,0 | 349.845.419,56 |

Source: From “*O protagonismo da UFRPE, UFPE e UNIVASF no desenvolvimento regional por meio do incentivo ao tratamento diferenciado nas contratações das micro e pequenas companies*”, by A. S. Cavalcante, 2020, p. 49. Prepared by the authors.

In regard to the volume of resources procured from companies of other sizes, there is a particular type of bidding waiver in the case of companies contracted by government organizations where competitive selection is absolutely impossible, where the law provides for procurement by billing waiver (Table 2) as per section 24 of Law 8.666 (1993), with the exception of subsections I and II.

As an example, we have companies that operate public concessions. In the case of the state of PE, Companhia Pernambucana de Saneamento (COMPESA) and Companhia Energética de Pernambuco (CELPE), or several teaching and research support foundations, government banks, several telephone companies (in these two latter cases, provided only a given company operates in a given region), and other situations provided for in subsections III thru XXIV of section 24 of Law 8.666 (1993).

Of the total of R\$ 60 billion contracted with companies of other sizes via bidding waivers, as shown in Table 2, the following amounts were channelled to special companies and companies of other sizes:

- a) R\$ 51.6 billion contracted via bidding waivers with so-called special companies;
- b) R\$ 8.4 billion contracted with companies of other sizes.

While also analysing this procurement modality, it should be stressed that the legislation allows for waivers in special situations, but the procurement must be made preferably from MEs/EPPs, according to subsection IV of section 49 of Supplementary Law 123 (2006). Putting it another way, all procurements via bidding waivers according to the legislation may be feasible by adopting preferential procurement through the intermediary of MEs/EPPs headquartered in the State of PE.

Following on from this, the distribution of the amounts shows:

- a) R\$ 7.2 million (46%) contracted from MEs/EPPs;
- b) R\$ 8.4 million (54%) contracted from companies of other sizes.

Thus, by observing the legal recommendation for bidding waiver processes that must be contracted preferably from MEs/EPPs, we are arguing that the Government should abide by the legal requirements and take steps to achieve ME/EPP bidding waiver procurement rates of close to 100%. If these resources were channelled as provided for in the public policy, they could directly and indirectly foster the economic and social development of the region, increase tax levies and contribute to maintaining and creating jobs in the State of PE and, furthermore, protect the MEs/EPPs, that today account for 27% of the nation's GDP.

Returning to Table 2, the second modality of acquisition discussed here is live bidding. In the case of this modality the judgment criterion will always be the lowest price and the competition for the supply of ordinary goods and services takes place in a public session using written proposals and verbal bids submitted remotely and electronically. In 2018, the institutions attached to Ministry of Education headquartered in the State of PE engaged in fully electronic procurements amounting to R\$ 230 million. Of this amount, R\$ 111.9 million (49%) were approved for MEs/EPPs while R\$ 118.4 milhões (51%) was contracted with companies of other sizes.

In price submissions, a modality normally used in medium-sized contracts, Table 2 shows that all the procurements were contracted from MEs/EPPs out of the total of R\$ 5.2 million designated. Price submission is a procurement modality between properly registered interested parties or those that meet the conditions for registration within three days prior to the date when the proposals are received, with due regard for the necessary qualifications.

In the competitive selection modality, R\$ 3.4 million (10%) of the R\$ 36 million in procurements was contracted with MEs/EPPs. As a rule, the selection criteria of the various bidding modalities is economic. In regard to engineering services, Decree 9.412 (2018) stipulates that those exceeding R\$ 36 million must be contracted under the competitive selection modality. In this modality, the aim is to obtain the best technique or technique and price when specialized services are involved, at the discretion of the managing entity. This modality allows for regionalized procurement, including in cases where the bidding process allows for subcontracting of the services.

If we go back to Table 2, in the tender offer modality a total of R\$ 260,000 was contracted. This is a procurement modality between interested when choosing jobs that

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*

require intellectual creation such as technical, scientific and architectural projects by instituting prizes or compensating the winners in accordance with the criteria contained in the bid notice. Therefore, it is a choice that is totally divorced from the competitive conditions required for the other modalities and given this prerogative, one cannot determine the size of the supplier to be contracted, which in this case justifies classifying this total procurement as being for companies of other sizes.

Lastly, Table 2 shows the non-requirement of bid tenders, a modality which in fiscal year 2018 contracted a total of R\$ 10.5 million. The study discovered that of this amount R\$ 8.5 million, (81%) was contracted from companies of other sizes, and R\$ 2 million (19%) from MEs/EPPs. The non-requirement of bid tenders exempts the Government from holding bidding procedures. This occurs when there is only one supplier of the item or when the item is unique or where a unique service or professional is involved.

The significant volume contracted from MEs/EPPs by institutions attached to the Ministry of Education has the potential to produce a positive impact on the development of the state of PE. Below we present the cases of the UFRPE, UFPE and UNIVASF federal universities.

5. Procurements by the UFRPE, UFPE and UNIVASF and the participation of MEs and EPPs

Table 03 shows the extent of the participation of MEs/EPPs in relation to companies of other sizes at each of the federal public universities.

Table 03: Approved procurements at the universities and the participation of micro/small businesses in 2018

| Universities | Amount (R\$) | Companies of Other Sizes | | MEs/EPPs | |
|--------------|-----------------------|--------------------------|-------------|----------------------|-------------|
| | | Amount (R\$) | (%) | Amount (R\$) | (%) |
| UFRPE | 56.867.279,99 | 46.144.675,38 | 81,0 | 10.722.604,61 | 19,0 |
| UFPE | 146.241.697,61 | 111.365.023,33 | 76,0 | 34.876.674,28 | 24,0 |
| UNIVASF | 46.522.725,09 | 28.945.755,05 | 62,0 | 17.576.970,04 | 38,0 |
| Total | 249.631.702,69 | 186.455.453,76 | 75,0 | 63.176.248,93 | 25,0 |

Source: From “O protagonismo da UFRPE, UFPE e UNIVASF no desenvolvimento regional por meio do incentivo ao tratamento diferenciado nas contratações das micro e pequenas companies”, by A. S. Cavalcante, 2020, p. 53. Prepared by the authors.

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*

It is worth recalling that Supplementary Law 123 (2006) is intended, among other things, to foster development and expand the role of small businesses in government procurement contracts. But of the total amount of R\$ 250 million in procurements approved by the three universities, 75% was contracted from companies of other sizes and only 25% from MEs/EPPs.

Table 04 shows which bidding modalities were contracted, as well as the volume contracted from MEs/EPPs and companies of other sizes in each modality and at each of the three universities.

Table 04: Participation of micro/small businesses in the procurements of the universities by procurement modality during 2018

| FEDERAL RURAL UNIVERSITY OF PERNAMBUCO – UFRPE | | | | | | |
|---|----------------------|-------------|--------------------------------|-------------|-----------------------|--------------|
| Procurement modality | MEs/EPPs (R\$) | (%) | Companies of Other Sizes (R\$) | (%) | Total (R\$) | (%) |
| Live bidding | 5.557.193,07 | 18,0 | 25.316.101,74 | 82,0 | 30.873.294,81 | 54,3 |
| Price Submissions | 3.925.618,87 | 100,0 | - | - | 3.925.618,87 | 6,9 |
| Bidding Waivers | 1.156.321,67 | 6,0 | 19.510.816,98 | 94,0 | 20.667.138,65 | 36,3 |
| Non-requirement of bid tender | 83.471,00 | 6,0 | 1.317.756,66 | 94,0 | 1.401.227,66 | 2,5 |
| Total | 10.722.604,61 | 19,0 | 46.144.675,38 | 81,0 | 56.867.279,99 | 100,0 |
| FEDERAL UNIVERSITY OF PERNAMBUCO – UFPE | | | | | | |
| Procurement modality | MEs/EPPs (R\$) | (%) | Companies of Other Sizes (R\$) | (%) | Total (R\$) | (%) |
| Live bidding | 28.096.516,81 | 31,0 | 61.745.959,65 | 69,0 | 89.842.476,46 | 61,4 |
| Price Submissions | 1.308.338,75 | 100,0 | - | - | 1.308.338,75 | 0,9 |
| Competitive selection | 3.483.938,43 | 10,0 | 30.737.688,15 | 90,0 | 34.221.626,58 | 23,4 |
| Bidding Waivers | 1.235.978,89 | 8,0 | 14.793.310,42 | 92,0 | 16.029.289,31 | 11,0 |
| Non-requirement of bid tender | 751.901,40 | 16,0 | 4.088.065,11 | 84,0 | 4.839.966,51 | 3,3 |
| Total | 34.876.674,28 | 24,0 | 111.365.023,33 | 76,0 | 146.241.697,61 | 100,0 |
| FEDERAL UNIVERSITY OF VALE DE SÃO FRANCISCO – UNIVASF | | | | | | |
| Procurement modality | MEs/EPPs (R\$) | (%) | Companies of Other Sizes (R\$) | (%) | Total (R\$) | (%) |
| Live bidding | 15.166.768,92 | 70,0 | 6.516.081,58 | 30,0 | 21.682.850,50 | 46,6 |
| Price Submissions | - | - | - | - | - | 0 |
| Competitive selection | - | - | 1.893.956,92 | 100,0 | 1.893.956,92 | 4,0 |
| Bidding Waivers | 2.386.175,12 | 10,0 | 20.342.004,67 | 90,0 | 22.728.179,79 | 48,9 |
| Non-requirement of bid tender | 24.026,00 | 11,0 | 193.711,88 | 89,0 | 217.737,88 | 0,5 |
| Total | 17.576.970,04 | 38,0 | 28.945.755,05 | 62,0 | 46.522.725,09 | 100,0 |

Source: research data. Prepared by the authors.

Although the degree of efficacy of these public policies of differentiated, favoured and simplified treatment for promoting small businesses as an instrument of national sustainability can be seen in the figures from institutions such as the Brazilian

Micro and Small Company Support Services (SEBRAE), the Brazilian Census Bureau (IBGE), and the Brazilian government itself, among others, the information obtained in this study and shown in Table 4 does not satisfy the legislation and requires the federal universities to take concrete action.

This trend was replicated when we analysed the participation of MEs/EPPs headquartered in PE compared with the participation of MEs/EPPs headquartered in the other states of Brazil in every procurement modality (Table 05). In other words, of the 1,118 MEs/EPPs contracted, 818 (73%) were headquartered outside the state of PE and 311 (27%) headquartered within the state of PE.

Table 05: Participation of micro/small businesses headquartered in PE and headquartered outside the state.

| University | MEs/EPPs Headquartered in PE | (%) | MEs/EPPs Headquartered outside PE | (%) | Total | (%) |
|--------------|------------------------------|-------------|-----------------------------------|-------------|--------------|--------------|
| UFRPE | 118 | 27,0 | 322 | 73,0 | 440 | 100,0 |
| UFPE | 174 | 35,0 | 324 | 65,0 | 498 | 100,0 |
| UNIVASF | 19 | 10,0 | 172 | 90,0 | 180 | 100,0 |
| Total | 311 | 27,0 | 818 | 73,0 | 1.118 | 100,0 |

Source: research data. Prepared by the authors.

Using this analysis, it is possible to indicate the volume that could have potentially been channelled to MEs/EPPs headquartered in the State of PE, if the preferential margin on hiring had been adopted.

Table 6 is further evidence of peculiar aspects concerning the participation of the MEs/EPPs headquartered in PE in the Live Procurement modality. And furthermore, it shows that there is room for adding value to the work of the management of the federal universities to optimize the use of the purchasing power of the states as a resource and as public policy, and to promote sustainable regional development.

Table 06: Participation of micro/small businesses headquartered in PE in the Live Procurement modality.

| University | MEs/EPPs Headquartered in PE (R\$) | (%) | MEs/EPPs Headquartered outside PE (R\$) | (%) | Total (R\$) |
|--------------|------------------------------------|-------------|---|-------------|----------------------|
| UFRPE | 1.525.282,85 | 27,0 | 4.031.910,22 | 73,0 | 5.557.193,07 |
| UFPE | 12.064.399,33 | 43,0 | 16.032.117,48 | 57,0 | 28.096.516,81 |
| UNIVASF | 8.258.213,53 | 54,0 | 6.908.555,39 | 46,0 | 15.166.768,92 |
| Total | 21.847.895,71 | 45,0 | 26.972.583,09 | 55,0 | 48.820.478,80 |

Source: Research data. Prepared by the authors.

Electronic live bidding has become the modality most used by the federal universities for procurement and hiring because of the accessibility of participation and the speed of the processes. Its utilization is greater by volume for which reason it has been used here as a sample to emphasize that differentiated treatment as a public policy still needs to be incorporated within the federal universities, involving different levels of responsibility. This involves in-depth alterations to the spaces and processes where policy is made, that is, where material choices are made as defined by Secchi (2010) when labelling public policies.

According to the 2019 estimate by the Brazilian Census Bureau (IBGE) (2020), Pernambuco is divided into 185 municipalities and has a population of around 9.49 million inhabitants (4.55% of the Brazilian population, the seventh-highest population among the Brazilian states). Pernambuco's most populous city is Recife, the capital, with 1,645,727 inhabitants. It is followed by Jaboatão dos Guararapes with 702,298, located in the metropolitan region. Most of the MEs/EPPs are to be found in these municipalities.

It is important to give a relative idea of what the resources of the IFES intended for procurement represent. For example, taking the case of UNIVASF, with R\$ 46 million in resources contracted, this can be compared to the GDP of the municipalities of the São Francisco mesoregion for the year 2017.

Table 07: Percentage of the amount contracted by UNIVASF relative to the GDP of the municipalities of the São Francisco Mesoregion (except Petrolina) – 2017

| Municipality | GDP (in millions of Reais) | (%) |
|--------------------------|----------------------------|------|
| Santa Maria da Boa Vista | 516,5 | 9,0 |
| Petrolândia | 1.078,4 | 4,3 |
| Cabrobó | 404,5 | 11,5 |
| Floresta | 412,8 | 11,2 |
| Tacaratu | 170,6 | 27,2 |
| Belém do São Francisco | 203,2 | 23,0 |

Source: From “*PIB a preços correntes: comparação entre os municípios de Pernambuco,*” Brazilian Census Bureau, 2020. Prepared by the authors.

Therefore, one can see that the resources contracted by UNIVASF, located in Petrolina and with spillover effects in the entire mesoregion, represent an average of 14.4% of the GDP of the municipalities located there, reaching 27.2% as in the case of Tacaratu.

It is important to mention that the volume ascertained for the universities represents the total actually contacted, not the institution's budget. The GDP of the

municipalities, in turn, represent the sum of all the goods and services produced in the municipal economies over a one-year period. This observation shows once again the importance of demonstrating in numerical terms the considerable participation of the universities in the economy and in fostering the region's socioeconomic development, provided the management embrace the public policy of differentiated treatment when contracting from MEs/EPPs.

The public policy that facilitates the promotion and fostering of simplified and privileged treatment to this segment of companies in government procurement contracts is now a reality, but the universities need to effectively embrace these policies within their management structure. But as Melazzo (2010) shows, a simple conceptualization is not enough for us to define public policy. In fact, as demonstrated in this section, more than a government action program public policy refers to or expresses the different dimensions of the processes involving the decision and intervention of the State in a given reality. As an activator and coordinator of networks and collaborative forms of management for the purpose of coproducing the public good, in this case under debate here, the State ceases to be the sole formulator and executor of public policies and begins sharing these responsibilities with the universities. Thus, it gives up its function as the sole provider of the public good to seek the participation of other players. In this way, beyond the question of semantics (which in itself constitutes a rich doorway to the discussion), Melazzo (2010) points out that this term also implies that as a course of deliberate action public policies involve preferences, choices and decisions that turn the discussion of them to the individual and collective mechanisms involving how they are formulated, from the planning phase to implementation and even in the results evaluation phase.

The principles of differentiated and favoured treatment for MEs/EPPs is not limited to a few written words that are broken down into laws, rather it represents the synthesis of the longing for the development and the economic, social and political progress of the Brazilian states. It is also not a genuinely Brazilian creation, as it has been manifested in many countries with a diversity of economic systems. It is to be hoped, therefore, that the differentiated and favoured treatment afforded to MEs/EPPs is properly understood and applied, and that the management of the universities and the other government entities acknowledge the relevance and the dynamism that makes them worth of this note. After all, MEs/EPPs should have degrees of legitimacy conferred on them by the political process so that they formulate and perform them.

Paradoxically, on the one hand there is talk about the potential of MEs/EPPs as engines of economic and social development (fostering job opportunities and tax levies); on the other hand, their participation is not encouraged, even when they are registered, certified and technically qualified to fully meet the characteristics of the item to be procured. While the importance of MEs/EPPs is in fact widely known, it is also a fact that their situation relative to procurements from companies of other sizes is an unfavourable one. The coexistence of these micro and small companies with mid-size and, especially, large companies is a highly dissuasive factor. In a contest of this nature, expenses are always incurred, and the smaller companies disappear simply because they are smaller. Creating a strong market highly capable of offering and supporting large, mid-size and small producers similarly requires equality of opportunity and access.

But what the study has shown is that freedom of competition continues to be the provision prevailing in regard to the opportunities for MEs/EPPs in relation to companies of other sizes. That is why it is necessary to reiterate the importance and recognize the existence of MEs/EPPs in the sense of their obtaining legitimacy by applying differentiated, favoured and preferential treatment. This scenario only serves to reemphasize that decision-making processes are complex and that studies about implementation must aim to understand “politics as they are” (Lotta, 2019, p. 20), and this presupposes taking an analytical approach to the phenomenon described herein and to extend the investigation to beyond the formal, the official and the normative.

Otherwise, the differentiated and favoured treatment afforded to MEs/EPPs will fall into the category of what Melazzo (2010) defined as a public policy characterized by “inaction”, or what Monteiro (1982) referred to as “a quasi-policy”, in other words, areas where one can see that governments are not present, whether because they do not acknowledge the relevance of the question or because they are technically, administratively or politically incapable of bringing it to the centre of their planning and management processes, to which we would add here, governance.

Governance, in the sense it is used here, refers to the capacity for action in implementing public policies. Governance in this sense implies expanding and enhancing the establishment of public policies that demand strengthening the universities’ ties to society and its representative institutions, as well as accountability mechanisms, in other words, accountability procedures, their effective implementation and the evaluation of

their results. That is, when the evaluation of a public policy must take into account the results and the consequences of that intervention.

We are taking into account here that the procurement process of the federal public universities is grounded in strict compliance with the legal procedure since it is governed by legislation that standardizes the entire process. In other words, government entities are legally bound, with the exception of several rare cases, to put forward a prior procedure for government contracts and procurement, known as bidding processes, put into effect using bid notices. The exceptions are bidding processes such as waivers and non-requirement of bidding processes, both of them also governed by rules and specificities defined in the Procurement Law. The legal grounds for the obligatoriness to procure can be found in section 37 of the Federal Constitution of 1988, regulated by Law 8.666 (1993).

The bid notice consists of a call for bids for the purpose of establishing the conditions required for bidders to participate, the development of the bidding process and future procurement. In fact, the various legal provisions involving a government procurement process produce their own rules that govern the roles of government employees, and nothing can be created or undertaken unless it has been provided for in the call for bids instrument.

As if the Brazilian procurement legislation were not enough, the universities are inspected by the Accounting Courts that verify compliance with the rules set out in the procurement agreements: the General Counsel to the Federal Government (AGU), the Federal Accounting Court (TCU), the Ministry of Transparency and the Office of the Federal Comptroller-General (CGU). Consequently, at the centre of government procurement processes lies the registration system for documenting every phase of the process so that the oversight and control entities can, in turn, verify these.

Therefore, in regard to its legal framework, differentiated, favoured and preferential treatment is mandatory, that is, the universities and all government bodies of the federative entities are obligated to afford this treatment to MEs/EPPs. However, the inclusion in the bid notices that this differentiated treatment be regionalized in favour of MEs/EPPs in the state of PE is a decision of the management bodies of the three federal universities operating in the state.

Where MEs/EPPs are concerned, participation in a call for bids is open to those who in the initial phase of qualification have the minimum qualification requisites required in the bid notice that characterize their technical and structural aspects, with the aim of any technical assistance and/or warranty requirements in the after-sales service. This preliminary qualification is conducted on the Unified Supplier Register System (SICAF) on the Brazilian government's purchasing portal. Moreover, the bid notice requires the submission of several certificates, for example, a Certificate of Technical Aptitude that qualifies bidders to provide given goods or services and, in addition, a draft of the contract to be signed containing every obligation of the contractor. During the contest, each proposal is checked and those not complying with the pre-established conditions in the bid notice are disqualified.

Actually, it is the public employees working in the Procurement and Bidding Sector and in the Office of the Vice Dean of Administration that organize a Bidding Commission and define an auctioneer who are in charge of government procurements by the Brazilian federal universities.

6. Final considerations

This is a paper intended for a specific case of a public policy made possible by government procurement. Thus, the overall objective was to demonstrate how a federal public university can (or cannot) contribute to regional development by effectively affording differentiated, favoured and preferential treatment to companies organized as MEs/EPPs in government procurements of goods, services and works.

We believe this intention has been achieved, since based on the 2018 period it has specifically dealt with the participation of MEs/EPPs in the procurements of the three federal universities of the state of Pernambuco: UFRPE, UFPE, and UNIVASF.

Although this paper reinforces the idea that a public policy is not just characterized as a technical process, it did not analyse the implementation of the differentiated, favoured and preferential treatment afforded to MEs/EPPs in government procurements, that is, how the decisions were actually arrived at through the practical involvement of the three universities. As a result, this limitation is now suggested for a new study.

Registration of everything that is done, and the resulting increase in formalities, are transforming government procurements into a bureaucracy focused on the formalization of procedures, with no attention to the results, an aspect that goes to the

heart of the evaluation of public policies. Perhaps these aspects partly explain the perspectives of studies into the implementation that have allocated attention to the role of the interest groups and players responsible for deciding on topics or different issues throughout public policies. From the results of this study it appears, at first site, that MEs/EPPs have been effective in their organization and influence in order to obtain favourable policies. However, the dynamic and complexity of the legal context of the universities in effectively affording differentiated, favoured and preferential treatment need to be taken into account and investigated.

Empirically, the complex nature of the legal framework of the procurement process can be seen as a key feature, primarily when the policies are formulated in the absence of the active participation of those whose cooperation is essential in the implementation phase.

Lastly, let the records show that although the study has focused on the three federal universities in Pernambuco state, it can serve as a parameter for pursuing other studies in other states, with the support of the methodology developed here.

References

Barrett, S., & Fudge, C. (1981). Examining the policy-action relationship. In S. Barrett, & C. Fudge (Eds.), *Policy and action: Essays on the implementation of public policy* (pp. 3-31). London: Methuen.

Brasil (1993). Lei n. 8.666, de 21 de junho de 1993. Regulamenta o art. 37, inciso XXI, da Constituição Federal, institui normas para licitações e contratos da Administração Pública e dá outras providências. Recuperado de http://www.planalto.gov.br/ccivil_03/leis/l8666cons.htm

Brasil (2006). Lei complementar n. 123, de 14 de dezembro de 2006. Institui o Estatuto Nacional da Microempresa e da Empresa de Pequeno Porte; altera dispositivos das Leis no 8.212 e 8.213, ambas de 24 de julho de 1991, da Consolidação das Leis do Trabalho - CLT, aprovada pelo Decreto-Lei no 5.452, de 1o de maio de 1943, da Lei no 10.189, de 14 de fevereiro de 2001, da Lei Complementar no 63, de 11 de janeiro de 1990; e revoga as Leis no 9.317, de 5 de dezembro de 1996, e 9.841, de 5 de outubro de 1999. Recuperado de http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp123.htm

Brasil (2014). Lei complementar n. 147, de 7 de agosto de 2014. Altera a Lei Complementar no 123, de 14 de dezembro de 2006, e as Leis nos 5.889, de 8 de junho de 1973, 11.101, de 9 de fevereiro de 2005, 9.099, de 26 de setembro de 1995, 11.598, de 3 de dezembro de 2007, 8.934, de 18 de novembro de 1994, 10.406, de 10 de janeiro de 2002, e 8.666, de 21 de junho de 1993; e dá outras providências. Recuperado de http://www.planalto.gov.br/ccivil_03/leis/LCP/Lcp147.htm

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*

Brasil (2015). Decreto n. 8.538, de 6 de outubro de 2015. Regulamenta o tratamento favorecido, diferenciado e simplificado para as microempresas, empresas de pequeno porte, agricultores familiares, produtores rurais pessoa física, microempreendedores individuais e sociedades cooperativas de consumo nas contratações públicas de bens, serviços e obras no âmbito da administração pública federal. Recuperado de http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/decreto/d8538.htm

Brasil (2018). Decreto n. 9.412, de 18 de junho de 2018. Atualiza os valores das modalidades de licitação de que trata o art. 23 da Lei nº 8.666, de 21 de junho de 1993. Recuperado de http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/D9412.htm

Brasil (2022). Painel de compras do governo federal. Ministério da Economia, 2022. Recuperado de <http://paineldecompras.economia.gov.br/>

Cavalcante, A. S. (2020). O protagonismo da UFRPE, UFPE e UNIVASF no desenvolvimento regional por meio do incentivo ao tratamento diferenciado nas contratações das micro e pequenas empresas. (Dissertação de Mestrado). Centro de Ciências Sociais Aplicadas, Universidade Federal de Pernambuco, Recife, PE, Brasil. Recuperado de <https://repositorio.ufpe.br/handle/123456789/39023>

Costa, C. C. M., & Terra, A. C. P. (2019). Compras públicas: Para além da economicidade. Brasília, DF: Enap. Recuperado de <https://repositorio.enap.gov.br/handle/1/4277>

Costa, N. R. (1998). Políticas públicas, justiça distributiva e inovação: Saúde e saneamento na agenda social. São Paulo: Hucitec.

Cruz, N., Neto. (2017). Licitações para Micro e Pequenas Empresas. Cadernos da Escola Paulista de Contas Públicas, 1(1), 56-62. Recuperado de <https://www.tce.sp.gov.br/epcp/cadernos/index.php/CM/article/view/19/20>

Cunha, E. P., & Cunha, E. S. M. (2002). Políticas públicas sociais. In A. M. Carvalho, F. Salles, M. B. Guimarães, & W. Ude (Orgs.), Políticas públicas (pp. 11-26). Belo Horizonte: Ed. UFMG.

Farah, M. F. S. (2016). Análise de políticas públicas no Brasil: De uma prática não nomeada à institucionalização do “campo de públicas”. *Revista de Administração Pública*, 50(6), 959-979. doi: <http://dx.doi.org/10.1590/0034-7612150981>

Hill, M., & Hupe, P. (2003). The multi-layer problem in implementation research. *Public Management Review*, 5(4), 471-490. doi: <https://doi.org/10.1080/1471903032000178545>

Frey, K. (2000). Políticas públicas: um debate conceitual e reflexões referentes à prática da análise de políticas públicas no Brasil. *Planejamento e Políticas Públicas, Brasília*, 21, 211-259. Recuperado de <https://www.ipea.gov.br/ppp/index.php/PPP/article/view/89/158>

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*

Instituto Brasileiro de Geografia e Estatística (2020). *PIB a preços correntes: Comparação entre os municípios de Pernambuco*. Rio de Janeiro: Autor. Recuperado de <https://cidades.ibge.gov.br/>

Lotta, G. (2019). A política pública como ela é: Contribuições dos estudos sobre implementação para a análise de políticas públicas. In G. Lotta (Org.), *Teorias e análises sobre implementação de políticas públicas no Brasil* (pp. 11-38). Brasília: Enap.

Lowi, T. J. (1964). American business, public policy, case-studies and a political theory. *World Politics*, 16(4), 677-715. Recuperado de <https://www.cambridge.org/core/journals/world-politics/article/abs/american-business-public-policy-casestudies-and-political-theory/6621C1B577BB52D00AFBD70F82B94C2D>

Melazzo, E. S. (2010). Problematizando o conceito de políticas públicas: Desafios à análise e à prática do planejamento e da gestão. *Revista Tópos*, 4(2), 9-32. Recuperado de <https://revista.fct.unesp.br/index.php/topos/article/view/2253/2062>

Miguel, L. L. (2018). A lei de responsabilidade fiscal e a implementação das políticas públicas. *Revista Científica Multidisciplinar Núcleo do Conhecimento*, 4(7), 80-94.

Monteiro, J. V. (1982). *Fundamentos da política pública*. Rio de Janeiro: IPEA/INPES.

Oliveira, V. E., & Couto, C. G. (2019). Diretrizes prioritárias e fases da implementação: Como mudam as políticas públicas. In G. Lotta (Org.), *Teorias e análises sobre implementação de políticas públicas no Brasil* (pp. 67-97). Brasília, DF: Enap.

Outhwaite, W., & Bottomore, T. (1996). *Dicionário do pensamento social do século XX*. Rio de Janeiro: Jorge Zahar.

Rodrigues, M. M. A. (2010). *Políticas públicas (Coleção folha explica)*. São Paulo: Publifolha.

Secchi, L. (2010). *Políticas públicas: Conceitos, esquemas de análise, casos práticos*. São Paulo: Cengage Learning.

Serviço Brasileiro de Apoio às Micro e Pequenas Empresas (2018). *Relatório especial do CAGED: Primeiro emprego nos pequenos negócios - 2017*. Brasília, DF: Sebrae.

Stokes, R. (1991). *Reluctant partners: Implementing federal policies*. Pittsburg: Pittsburg University Press.

Titmuss, R. M. (1950). *Problems of social policy*. London: HMSO.

Thoenig, J.C. (2000). A avaliação como conhecimento utilizável para reformas de gestão pública. *Revista do Serviço Público*, 51 (2): 54-71. Recuperado de <https://revista.enap.gov.br/index.php/RSP/article/view/325/331>

Cavalcante; Presser & Ramos. *Federal Public Universities and the policy of different treatment to micro and small businesses in the State of Pernambuco.*