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The public private partnerships of the social and solidarity economy in Brazil - study of the recycling enterprises and their economic and legal relations with the public power

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# Working Paper

**The Public Private Partnerships of the Social and  
Solidarity Economy in Brazil - Study of the Recycling  
Enterprises and their Economic and  
Legal Relations with the Public Power**

Daniel Francisco NAGAO MENEZES & Leandro PEREIRA MORAIS

**CIRIEC No. 2021/06**

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Legal Relations with the Public Power\***

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## **Abstract**

The objective of this research was to analyze the tender exemption for selective waste collection by associations and cooperatives formed by low-income people with a view to contribute to the Sustainable Development Goals (SDGs), which was proclaimed in the 2030 Agenda. As a result, it was discovered that 13 of the 17 SDGs advocated in the 2030 Agenda can be positively affected by the exemption from bidding, especially because they will foster collective organizations, generating reflections on the lives of low-income people who may be involved in those activities. In addition, it was observed that the implementation of this local sustainable development policy creates challenges such as: the interests of local and regional elites, the absence of a balanced environmental development policy and the inability of environmental management, as well as social and economic problems in the institutionalization cycle of these cooperatives and workers associations.

**Keywords:** Offer exemption, 2030 Agenda, Sustainable Development

## **Résumé**

L'objectif de cette recherche était d'analyser l'exemption de soumission pour la collecte sélective de déchets par les associations et coopératives formées par des personnes à faible revenu, ayant pour but de contribuer aux Objectifs de développement durable (ODD), proclamés dans le Programme 2030. En conséquence, il a été découvert que 13 des 17 ODD préconisés dans le Programme 2030 peuvent être impactés positivement par l'exemption de soumission, en particulier parce qu'ils favoriseront les organisations collectives, générant des réflexions sur la vie des personnes à faible revenu qui pourraient être impliquées dans ces activités. En outre, il a été observé que la mise en œuvre de cette politique locale de développement durable suscite des nouveaux débats et enjeux tels que : les intérêts des élites locales et régionales, l'absence d'une politique de développement environnemental équilibrée et l'incapacité de la gestion environnementale, ainsi que les problèmes sociaux et économiques dans le cycle d'institutionnalisation de ces coopératives et associations de travailleurs.

**Mots-clés :** offre d'exemption, Agenda 2030, Développement durable

## INTRODUCTION

As expected, the state has a strong purchasing power, not only for its resources, but also for its structural needs. From this, it follows that the action of the "consumer state" tends, at the same time, to promote compliance with the demands of the public bodies and to foster the economy in general. By highlighting the promotion of the economy, national states finally assume a strategic cycle that seeks to combine sustainability with a focus on local development actions.

In recent years, the State has promoted public policies that tend to expand development initiatives in full collaboration with associations and cooperatives, which operate in various sectors of public interest. One of the main ways of considering sustainable local development occurs through incentives, such as the waiver of offers in the hiring of these entities to promote the collection, processing and marketing of solid waste.

Therefore, the purpose of this research is to analyze the tender exemption for selective waste collection by associations and cooperatives formed by low-income people as a result of the Sustainable Development Goals (SDGs) proclaimed in the 2030 Agenda, which promotes (and seeks to carry out) medium and long-range public policies. It is in this sense, for example, that the National Solid Waste Policy (PNRS) of Brazil, established by Law 12.305/2010 specifies in article 8, point IV, that the incentive for the creation of cooperatives or other forms of associations of collectors of reusable and recyclable materials becomes one of the main instruments of this sustainability policy.

At the municipal level, the creation of these entities with the possibility of exemption from bidding promotes sustainability policies, radiating various effects for various social segments, such as access to income by people without economic capacity, promoting an important aspect of social justice.

In this context, due to the advent of the legal framework built by the Constitution of the Federative Republic of Brazil of 1988 - CRFB, it is true that the contracting performance of the State must be subject to moralizing principles, such as equality, the search for more effective proposal and, more recently, sustainable national development, as Law 11.445/2007 adds to the emblematic Law 8.666/1993.

In addition to the socioeconomic improvements mentioned above, the promotion of rights considered as the fourth generation, as is the case of the ecologically balanced environment with intergenerational benefits, favors

sustainable purchases. In this sense, if earlier there was an apparent forgetfulness of the social problems involving the public procurement process, today, it can be said, there is a regulatory duty imposed on the public manager to promote both social and environmental objectives, as provided in the article 24, point XXVII, of said Law 8.666/1993.

From this legal provision, it is possible to directly contract (without tender) associations or cooperatives formed exclusively by low-income people recognized by the government as collectors of recyclable materials for the collection, processing and commercialization of recyclable or reusable urban solid waste, in areas with a selective waste collection system. This legal provision is included in the PNRS policy, article 36, paragraphs 1 and 2, which will be detailed further below.

At the same time, we also consider the impact on sustainable development that the implementation of such public procurement policy can have. This can be seen, for example, in the positive effect on the reduction of plastic and other petroleum products in contact with the soil, the reduction of recyclable waste released on public roads and the consequent improvement in water drainage systems Rainfall, in addition to the greatest preservation of ecosystems and species. It is in this sense that the present paper seeks to verify what can be contemplated through the exemption of tender in the selective waste collection by associations or cooperatives.

By the way, it should be noted that the proposed approach presupposes the dialogue between administrative law, public management, the city's public policy and sustainable development based on the triangulated legal framework, internally, by CRFB, Law 8.666/93 and PNRS, and abroad, the United Nations International Conferences for the Environment.

To achieve this objective, this paper reviewed the already consolidated work on direct contracting, addressing legislation, doctrine and, somewhat, jurisprudence (not only in the courts but also in the Court of Auditors of the Union - TCU). It also looks at the subject from an international perspective by analyzing, albeit initially, international documents and legal systems. Based on this information, an analysis was carried out on the implications and limitations of the research object against the 2030 Agenda.

Consequently, this paper is organized in three sections: 1) we seek to organize the debate on sustainability, public procurement and its importance in international sustainable development, pointing out the national and local / municipal perspective of this action; 2) we confront the tender exemption for selective waste collection with the SDGs; and 3) we address the challenges and

the possible collaboration presented by associations and cooperatives for the work in the collection, processing and commercialization of these materials.

## **1. SUSTAINABLE DEVELOPMENT AND THE 2030 AGENDA**

Sustainability issues have not been on the agenda for a short time, and the number of international and national public documents dealing with social and environmental issues is considerable. In this sense, according to Valente<sup>3</sup>, several countries began to use, as a mechanism to promote initiatives aimed at the production of sustainable goods and services, the purchasing power of government entities, incorporating criteria of environmental sustainability.

In this context, we highlight the variety of international conferences on climate, environment and the commitments assumed by various countries/nations. At United Nations - UN Registries' level, the first important environmental conference was the Stockholm Conference in 1972. The global legal framework for the balance between economy and sustainability was launched.

Another very important event is the World Commission on Environment and Development (CMMAD or WCED), known as the Brundtland Commission, which began in 1982. This resulted in the most widespread and often contradicted concept. Sustainable development as one that meets the needs of the present without compromising the ability of future generations to meet their own needs<sup>4</sup>.

Despite the occurrence of a series of other events with the collaboration of several nations, this paper will seek to focus on a document that came to consolidate the assumptions built over the years under the auspices of the UN. In September 2015, the Sustainable Development Summit took place in New York at the UN headquarters. All UN participating countries have defined the new Sustainable Development Goals (SDGs) as part of a new sustainable development agenda that should be finalized by the MDG (Millennium Development Goals). Deadline 2030, this agenda is known as the 2030 Agenda for Sustainable Development. Through the objectives outlined there, sustainable development is sought from an environmental and human perspective,

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<sup>3</sup> VALENTE, M. A. L., "Marco legal das licitações e compras sustentáveis na Administração Pública", Câmara dos Deputados, Estudo, março de 2011.

<sup>4</sup> WCED, "Report of the World Commission on Environment and Development: Our common future", Oslo, United Nations, 1987.

to reconcile economic progress, poverty reduction and sustainability. The 2030 Agenda of the "Five P" are as follows:

*People: eradicate poverty and hunger in every way and guarantee dignity and equality;*

*Prosperity: guarantee a prosperous and full life in harmony with nature;*

*Peace: promote peaceful, fair and inclusive societies;*

*Partnerships: implement the agenda through a solid global partnership;*

*Planet: protect the natural resources and climate of our planet for future generations.*

Of the five P listed above, there is an international / global tendency to harmonize important issues such as peace, prosperity, the fight against poverty and hunger with the protection of natural resources and the planet's climate for future generations.

In this search, the UN had established eight Millennium Development Goals (MDGs), whose actions were monitored and their results consolidated in the report published in 2015. The MDGs, according to the Millennium Development Goals Report document consisted of: 1) Eradicate extreme poverty and hunger; 2) Achieve universal primary education; 3) Promote gender equity and female empowerment; 4) Reduce child mortality; 5) Improve maternal health; 6) Combat HIV / AIDS, malaria and other diseases; 7) Ensure environmental sustainability; 8) Develop a global partnership for development. Fifteen years after the launch of the objectives, after the characterization of the strengths and weaknesses of the achievement of the objectives expressed in the report, there was a greater opportunity to better detail the new goals and objectives, now by 2030. The 17 (seventeen) Sustainable Development Goals (SDGs) are:

1. End poverty in all its forms, everywhere;
2. End hunger, achieve food security and better nutrition and promote sustainable agriculture;
3. Ensure a healthy life and promote well-being for all, at all ages;
4. Ensure equitable, inclusive and quality education and promote lifelong learning opportunities for all;
5. Achieve gender equality and empower all women and girls;
6. Ensure the availability and sustainable management of water and sanitation for all;

7. Ensure reliable, sustainable, modern and affordable access to energy for all;
8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all;
9. Build robust infrastructure, promote inclusive and sustainable industrialization and foster innovation;
10. Reduce inequality within and between countries;
11. Make cities and human settlements inclusive, safe, resilient and sustainable;
12. Guarantee sustainable production and consumption patterns;
13. Take urgent measures to combat climate change and its impacts;
14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development;
15. Protect, restore and promote the sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, stop and reverse land degradation and stop loss of diversity;
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels;
17. Strengthen the means of implementation and revitalize the global partnership for sustainable development<sup>5</sup>.

With these assumptions, the UN seeks to stimulate global, national, regional and subregional actions to advance the SDGs. One of the highlights in the policies that support the roadmap for locating the SDGs is cooperative governance to establish common priorities. In this regard, several governance mechanisms are listed, such as intermunicipal cooperation, which states that local and regional governments must work together to ensure a more integrated and efficient approach to territorial development through cooperation in the provision of services, infrastructure and, when possible, through the exchange of resources and capabilities. These and other elements may be in line with the vision of sustainability in procurement, a point that will be discussed in the next section.

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<sup>5</sup> ONU - ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Transformando Nosso Mundo: A Agenda 2030 para o Desenvolvimento Sustentável. Nova Iorque, 25 set. 2015. Disponível <[http://www.itamaraty.gov.br/images/ed\\_desenvsust/Agenda2030-completo-site.pdf](http://www.itamaraty.gov.br/images/ed_desenvsust/Agenda2030-completo-site.pdf)>. Acesso: 14/10/2019.

## 2. SUSTAINABILITY IN THE OFFER THROUGH THE COMPARATIVE LAW

Having reviewed some points of the global sustainability landscape in the light of the 2030 Agenda, it is important to address the national aspects of public policies formulated and implemented by some countries in the field of public procurement and procurement in Brazil.

In this sense, Mohan<sup>6</sup> notes that the acquisition or contracting of works, goods and services would have historically been based on the search for the best possible terms/conditions, observing two criteria: price and quality. According to the author, this historical reality was designed with the aim of maximizing the benefits for the organization that purchases the inputs.

Under the proposal to reconcile aspects that go beyond the price and quality of the goods and services acquired, the promotion of sustainable purchases has been defended. According Mohan, sustainable acquisition involves considering environmental factors along with financial factors in purchasing decision making, which includes weighting aspects such as useful life, associated risks, success measures and implications for society and the environment.

In addressing the approach developed here, Mohan adds that through sustainable acquisition, organizations acquire their contributions taking into account a number of factors. In addition to the specific problems of finance, the author points out as primary attention to social aspects, such as the effects on the eradication of poverty, inequality in the distribution of resources, working conditions, human rights and fair trade.

Adjei<sup>7</sup> adds that sustainable public procurement would have the potential to generate benefits such as: (a) reduction of adverse environmental impacts derived from public procurement; and (b) improve the conditions of work, health and safety and the conditions of disadvantaged groups in the country that apply sustainable public procurement.

It is precisely in this context that countries that strive to create strategies to reduce pollutants and promote sustainable development have built

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<sup>6</sup> MOHAN, V., "Public procurement for sustainable development", Seul, IPPC4, 2010. Disponible en : [www.ippa.org/IPPC4/Proceedings/07GreenProcurement/Paper7-11.pdf](http://www.ippa.org/IPPC4/Proceedings/07GreenProcurement/Paper7-11.pdf) .  
Aceso: 11/10/2019.

<sup>7</sup> ADJEI, A. B., "Sustainable public procurement: a new approach to good governance", Seul, IPPC4, 2010. Disponível em:  
<[www.ippa.org/IPPC4/Proceedings/07GreenProcurement/Paper7-10.pdf](http://www.ippa.org/IPPC4/Proceedings/07GreenProcurement/Paper7-10.pdf)>.  
Aceso: 21/09/2019.

normative instruments to make procurement and public procurement feasible that honor the preservation of the environment.

In view of this, it is appropriate to preliminary point out terminological issues that support the study of the public procurement x sustainable development relationship. In this sense, under the United Nations Environment Program - UNEP, the nomenclature of sustainable public procurement (SPP) is used massively; for the European Commission, the term ecological public procurement (EPP). In the end, it should be emphasized that what is sought on both sides is sustainable development<sup>8</sup>.

Even in conceptual terms, it seems that state work in relation to sustainable procurement is carried out according to two attribution methodologies / models: centralized and decentralized. In the first case, a state organization or entity makes public purchases for itself and for the rest of the contracting authorities of the public sector; in the decentralized model, each management unit / contracting unit individually promotes their hiring. In Europe, for example, there is a transition between centralized and decentralized, with Germany being one of the cases of adoption of the latter.

In Latin America, on the contrary, the centralizing model still predominates. As reported by Schneider, there is no consensus on the best model, which will of course depend on the context of each nation.

In the case of Brazil, it can be said that, the implementation of the Price Registration System - SRP and the SIASG Module - IRP (General Administration System of Integrated Services - Price Registration Intention) turns out in a mixed system. For example, a Management Unit - UG can bid in favor of "n" interested parties, in accordance with the rules of the call instrument to which they adhere. This work tool honors, in addition to economy and efficiency in public management, the application of the standards introduced by Instrução 05/2017 SEGES/MPDG/Brazil, which imposes the development of risk assessments and the fulfillment of sustainability requirements in choosing the best proposal.

As noted Hely Lopes Meirelles<sup>9</sup>, the bidding systems closest to the Brazilian are the Portuguese, Spanish, Argentine and Uruguayan ones. However, other more different ordinances also address the issue of sustainability in

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<sup>8</sup> SCHNEIDER, H. "Experiências internacionais em contratações públicas sustentáveis: Coreia do Sul, Estados Unidos, Japão e Suécia", Divisão de Desenvolvimento Sustentável e Assentamentos Humanos da CEPAL, Santiago de Chile, Organização das Nações Unidas, 2015.

<sup>9</sup> MEIRELLES, H. L., "Direito Administrativo Brasileiro". 36ª ed., São Paulo, Malheiros, 2010.

state actions, such as the United Kingdom, where common law applies<sup>10</sup>. Of these countries, the one that has the closest pioneering reason for contracting by exempting the tender for the selective waste collection by cooperatives and associations of people in need is Spain, which works on sustainable public procurement at the local level.

In an international analysis, contemplating the reality of Spain, Germany, the United States, Mexico and Chile, as well as the Metropolitan Region of Santiago - Chile, Góngora<sup>11</sup> points out that there are gaps in the design of policies and the implementation of regulatory strategies on the environmental issue. For the author, state institutions with sufficient coordination and control power have little development of economic instruments through which effective incentives are offered to minimize waste production and correctly address the failures of the markets involved. Finally, one can understand the close relationship of the idea of Góngora and the state's participation in sustainable development through its role as a consumer of goods and services.

With a synthesis of the Spanish reality, Góngora argues that, in order to reduce, reuse, recycle and recover, as well as promote new, less polluting technologies, the Law establishes that the Public Administration, within its respective powers, can promote such practices. According to the author, the function of collecting, transporting and disposing of municipal waste in Spain is assigned to local governments. This perspective resembles the Brazilian regulatory reality, in which the municipalities are responsible for urban cleaning services, while, as will be seen below, they must also fulfill their sustainability obligations.

### ***Sustainability in Brazilian offers***

According to a report by SEBRAE-SP<sup>12</sup>, the sum of public procurement contracts in the European Union represents about 14% of European GDP. In the

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<sup>10</sup> CAVALCANTI, D., OLIVEIRA, G., D'AVIGNON, A., SCHNEIDER, H., TABOULCHANAS, K., "Compras públicas sustentáveis: Diagnóstico, análise comparada e recomendações para o aperfeiçoamento do modelo brasileiro", Comissão Econômica para a América Latina e o Caribe - CEPAL y Ministério do Meio Ambiente, Brasil, 2017.

<sup>11</sup> GÓNGORA, J. C., "Beneficios y costos de políticas públicas ambientales en la gestión de residuos sólidos: Chile y países seleccionados", Comissão Econômica para a América Latina e o Caribe - CEPAL - SEIRE Medio ambiente y desarrollo, Nações Unidas, 2003.

<sup>12</sup> SEBRAE. "Temas em debate I: As micro e pequenas empresas e as compras governamentais", São Paulo, 2004, disponible en: [http://www.cqgp.sp.gov.br/gt\\_licitacoes/publicacoes/compras\\_governamentais.pdf](http://www.cqgp.sp.gov.br/gt_licitacoes/publicacoes/compras_governamentais.pdf) aceso en 07/10/2019.

case of Brazil, recent estimates show that around 10% of Brazil's GDP is driven by purchases and hiring from government agencies. Thus, the degree of importance assumed by the figure of the consumer state in the development of a nation can be seen.

In this sense, Ferreira and Giusti<sup>13</sup>, before a "frequent and subliminal" doubt that would consider the possibility of bidding to promote other purposes, such as those announced in the preamble and in the first and most important notes of the Republican Charter, state that:

*The promotion of sustainable national development has come to be the purpose of the bidding process and, at the same time, it constitutes a fundamental right, so it can be concluded that, in Brazil, the bidding processes also aim to satisfy this fundamental right<sup>14</sup>*

This indicates that it is essential that aspects of environmental and social sustainability be considered in the use of public resources.

In this context, Squeff<sup>15</sup> points out that, although public sector procurement and contracting especially aim to meet some specific government objectives, it is undeniable that a more articulated use of the economic potential of state demands can honor several other objectives also associated with the development process. This is exactly the case of promoted sustainability as proposed in this document.

In this sense, Cavalcanti<sup>16</sup> notes that sustainable public procurement would be considered an instrument capable of promoting changes in production and consumption patterns at national level, in order to make them more sustainable, with government purchasing power.

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<sup>13</sup> FERREIRA, D., GIUSTI, A. F. C. O. "A licitação pública como instrumento de concretização do direito fundamental ao desenvolvimento nacional sustentável", A&C - R. de Dir. Administrativo & Constitucional, Belo Horizonte, ano 12, n. 48, p. 177-193, abr/jun, 2012, p. 189.

<sup>14</sup> FERREIRA, D., GIUSTI, A. F. C. O. "A licitação pública como instrumento de concretização do direito fundamental ao desenvolvimento nacional sustentável", A&C - R. de Dir. Administrativo & Constitucional, Belo Horizonte, ano 12, n. 48, p. 177-193, abr/jun, 2012.

<sup>15</sup> SQUEFF, F. de H. S., "O poder de compras governamental como instrumento de desenvolvimento tecnológico: análise do caso Brasileiro", Brasília, IPEA, 2014.

<sup>16</sup> CAVALCANTI, D.; OLIVEIRA, G.; D'AVIGNON, A.; SCHNEIDER, H.; TABOULCHANAS, K., 2017, *op. cit.*

With respect to the legal framework for sustainable offers in Brazil, there is a slight controversy. Some point out that - in 2010 solely sustainable public procurement was consolidated through the advent of Normative Instruction No. 1 of January 19, 2010, which establishes environmental sustainability criteria for the acquisition of goods, the contracting of services and works in the Federal Administration, edited by the Secretariat of Logistics and Information Technology - SLTI of the Ministry of Planning, Development and Management - MPDG.

The legal framework for sustainable public procurement in Brazil, can be seen as pre-existing, as it can be based on the systematic interpretation of the Federal Constitution, especially its arts. 23, VI, 170, VI and 225 accumulated with art. 37, XXI.

In this sense, as the 1988 Federal Constitution (CRFB) adopted democratic molds and established the defense of the environment as a mandatory factor of economic compliance, it cannot be said that the constituent kept silent about sustainable development in state action in general, although there are criticisms. For instance, art. 170, VI, of the Federal Constitution foresees that the economic order must observe the protection of the environment, including through differential treatment according to the environmental impact of products and services and their processes of preparation and provision.

In this context, the initial part of art. 225 of the Constitution requires that the Government defends and preserves the environment for present and future generations. Given these constitutional provisions, in light of the unity of the Constitution, it is understood that the Public Administration, in its bidding processes, must consider goods and services that meet the criteria of environmental sustainability.

After the structural change in the regulations of the offers opened by the State's constitution (CRFB), Brazil promoted the instrumentalization of the sustainability promotion in the actions of the consumer state. An example of this is the work of Advocacia Geral da União - AGU, which created a Specialized Center for Sustainability – NESLIC. According to the institution's website, “sustainability is the core of the General Consulting of the Union responsible for organizing and systematize legislation and other guidelines on sustainability in offers and contracts”. For this reason, the agency makes available on its website the National Guide to Sustainable Offers, as well as the Manual of Implementation of Sustainable Offers in the Federal Public Administration.

Also in relation to the action of the AGU, it should be borne in mind that, at the time you are urged to express your opinion on the call instruments (for example, edicts) and their annexes, federal prosecutors have generally paid attention to reflections on sustainability in bidding procedures, suggesting to consultants the adoption of criteria in this regard.

In addition to the work of the legal representation and advisory bodies of the Union, there is an administrative action promoted by the Ministry of Planning, Management and Development - MPDG, instrumentalized by the issue of Decree No. 7746 of 5 June 2012, which created the Interministerial Commission for Sustainability in Public Administration - CISAP.

An electronic portal was also created to host information and data from CISAP through a partnership. This data features the history of international conventions and the effects on the environment.

In view of this, we see, therefore, the importance of State participation in the search and use of skillful mechanisms to promote sustainable national development, either by regulating and supervising the performance of people in their activities or fighting for its own actions as Public Administration prints the sustainability seal.

### **3. SELECTIVE WASTE COLLECTION IN BRAZILIAN CITIES: A REAL REALITY?**

Considering the importance of the State acting as a consumer, Ribeiro and Júnior<sup>17</sup> point to the use of the term "public procurement policy" to express the idea that, underlying the purchase, there is a state policy, with goals and objectives, such as efficiency, local industry development and job creation. In this sense, we see the need for the State, at the same time, to develop its activities of promotion, regulation and provision of public services and promote environmental sustainability.

In this context, several policies have focused on local development. In view of this, selective waste collection, in addition to being substantially important in its results, has received significant treatment in both national and international standards.

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<sup>17</sup> RIBEIRO, C., JÚNIO, E. I., "Mensurando o mercado de compras governamentais brasileiro", Caderno Finanças Públicas, Brasília, n. 14, p. 265-287, dez. 2014.

Not by chance, it was during this period that the National Solid Waste Policy (PNRS) was established, established by Law No. 12.305/10, and it was during this period that Law No. 12.349, of December 15, was promulgated 2010. Sustainable national development as one of the objectives of the offers. In addition, another important point that dialogues with the increase in the index of municipalities with selective collection is also the considerable reduction in the cost per ton of selective collection versus common collection.

In addition to the issue of selective collection itself, being also the subject of this article the situation of low-income people as cooperative / contracted members by waiving the tender, the difference presented in regionalized collection rates, such as shown below.

The highest concentration of municipal selective collection programs remains in the southeast and south regions of the country. Of the total of Brazilian municipalities that perform this service, 81% are in those two regions. Once again, socioeconomic inequality stands out and, in this case, impacts on issues related to sustainable development.

Given these data, it seems clear that the current Brazilian reality is still incipient with respect to selective collection. This situation worsens in the poorest regions, north and northeast, and is probably associated with chronic socioeconomic aspects. Therefore, selective collection in Brazil remains a distant reality, despite its importance throughout the world and even in normative countries of origin.

### ***Notes on the offer exemption***

Advancing in the regulations of the country, Law 8.666/93 is a real milestone in the treatment of offers and public procurement. This Law deals with the performance of the consumer state, leaving the public administrator, at the same time, the advantage of operating the public machine with a wide range of exorbitant clauses and the burden of reconciling the public interest with the selection of the most advantageous proposal, isonomy and sustainable national development.

In this regard, the duty to tender, as a rule, finds exceptions that make direct contracting possible, either because of the impossibility of competition or because of the pursuit of the public interest. This is precisely the reason why, in particular cases, it can be directly contracted because of the impossibility of execution or exemption from bidding. While the impossibility of execution occurs when competition is impossible, in turn, the dispensation refers to:

situations in which the competition is possible, but its performance may not be for a convenient and timely Administration, in the light of public interest. So, in our cases of dispensation, it leads to the effect of direct contracting and the decision of Public Administration<sup>18</sup>

This is the case of the provision expressed in article 36 of the PNRS, which determines in its paragraphs 1 and 2:

*Paragraph 1. In order to comply with the provisions of subheadings I to IV of the initial part (caput), the holder of public urban cleaning and solid waste management services shall prioritize the organization and operation of cooperatives or other forms of association of reusable and recyclable material collectors formed by low-income individuals as well as their hiring.*

*Paragraph 2. The hiring provided for in Paragraph 1 is not required for bidding, pursuant to item XXVII of art. 24 of Law 8,666 of June 21, 1993.*

Also, as Satin, Pedrini and Comiran<sup>19</sup> well point out, PNRS establishes, in Article 18, the privilege of access to Union resources to municipalities that can establish the participation of cooperatives or other forms of association of recyclers, reusable and recyclable material collectors formed by low-income people.

It is noteworthy that, despite the full possibility of reasonable competition, the dispensing institute recognizes and values factors beyond regulations, such as economic and social development. In this regard, there is an inter-organizational effort by the state to promote sustainable national development in a joint force between the Secretariat of Logistics and Information Technology (SLTI) and the Advocacia Geral da União (AGU) to establish a federal example.

Other cases of exemption from bidding were also initiated in the Brazilian legislation, in accordance with Law 8.666/93, in Article 24, such as:

*VI - when the Union has to intervene in the economic domain to regulate prices or normalize supplies;*

*XIII - in the hiring of a Brazilian institution that is regularly or statutorily charged with research, teaching or institutional development, or an institution dedicated to the social*

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<sup>18</sup> MAZZA, A. "Manual de direito administrativo", 6ª ed., São Paulo, Saraiva, 2016, p. 696.

<sup>19</sup> SANTIN, J. R., PEDRINI, M., COMIRAN, R., "A política nacional dos resíduos sólidos e os municípios brasileiros: desafios e possibilidades", Revista de Direito da Cidade, v. 9, n. 2, p. 556-581, 2017, Universidade de Estado do Rio de Janeiro.

*recovery of the prisoner, provided that the contractor has an unquestionable ethical and professional reputation and is not for profit;*

*XX - in the hiring of a non-profit association of physically handicapped and of proven suitability, by Public Administration bodies or entities, to provide services or supply of labor, provided that the contracted price is compatible with the one practiced in the market.*

*XXX - hiring a public or private institution or organization, with or without profit, for the provision of technical assistance and rural extension services under the National Program of Technical Assistance and Rural Extension in Family Farming and Agrarian Reform, instituted by federal law.*

*XXXIII - in the hiring of nonprofit private entities for the implementation of cisterns or other social technologies for access to water for human consumption and food production to benefit low-income rural households affected by drought or regular water shortages.*

These cases of direct contracting portray the role of the state beyond mere legality as strict compliance with the rules, contributing to the reduction / combat of social diseases such as economic and financial imbalance, the re-socialization of the prisoner, the inclusion of people with disability, the fight against drought and the promotion of development in family farming.

Sustainable development, on the other hand, invites the public administrator to the difficult task of reconciling the equality and the search for advantages of the best proposal to the para-fiscal interests of the state, to the common good itself. In this sense, the direct contracting of cooperatives and associations formed by low-income people for the selective collection of waste, in addition to honoring the aspects of sustainability with respect to the PNRS, favors the fight for the reduction of social inequality and its diseases, which is also an aspect of sustainable development, according to the international conventions already exposed.

#### **4. DISPENSATION OF TENDER FOR SELECTIVE COLLECTION AND AGENDA 2030**

As discussed so far, the exemption from bidding for the contracting of selective waste collection by cooperatives and associations formed by low-income people, in addition to having a legal subsidy, seems to be attractive and linked to the prospects for sustainability. Now, we intend to review how much of the sustainable development goals the exemption for this purpose contemplates.

From what has already been portrayed, the first SDG is "to end poverty in all its forms, everywhere." Possibly this would be one of the SDGs that could be achieved by expanding the hiring of cooperatives or low-income associations for selective collection following the tender exemption. It is no secret that people with greater social vulnerability have livelihoods that are not the healthiest, such as in landfills that still exist in local Brazilian contexts. Part of this vulnerability assigns these citizens to extreme poverty, characterized in that the UN lives on less than \$ 1.25 per day (UN, 2015). In addition, even if they do not live within this limit, vulnerability is undeniable, so they can be placed in the range of poverty. Moreover, for them, the document that establishes the objectives and goals of sustainable development is very clear in point 1.4, which states that by 2030:

*Ensure that men and women, especially the poor and vulnerable, have equal rights to economic resources, as well as basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technologies and financial services, including microfinance<sup>20</sup>*

Ending hunger is the second objective, which includes achieving food security and improving nutrition and promoting sustainable agriculture. Although part of the goal discusses the production of food safely, there are goals related to ensuring access for all, "particularly the poor and people in vulnerable situations", which may be the case of the low-income people mentioned here. For this reason, the second SDG could also be considered as achieved by this practice.

The third SDG refers to the promotion of a healthy life and well-being for all. While the objectives in this regard are quite broad, including measures fighting serious diseases and maternal mortality, we highlight here the objectives that are most closely related to the consolidation of cooperatives or selective collection associations with low-income people, establishing the relationship that the increase in income and poverty reduction could in itself guarantee better access to or access to health.

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<sup>20</sup> ONU - ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Transformando Nosso Mundo: A Agenda 2030 para o Desenvolvimento Sustentável. Nova Iorque, 25 set. 2015. Disponível <[http://www.itamaraty.gov.br/images/ed\\_desenvsust/Agenda2030-completo-site.pdf](http://www.itamaraty.gov.br/images/ed_desenvsust/Agenda2030-completo-site.pdf)>. Acesso: 14/10/2019.

In addition, subjective aspects such as self-esteem for having a certain stability or employment can allow reduction in possible addiction, such as alcohol and drug consumption, and the generation of more well-being. It can also be surmised that the structure of the space for separating recyclable waste will be less unhealthy than landfills where many low-income people are currently making a living. However, it is important to highlight that in order to be linked to this objective, it is necessary to provide means for adequate infrastructure, avoiding precariousness and work overload, such as those portrayed by Coelho *et al.*<sup>21</sup>

The fourth SDG is related to education. Although the SDG is broadly and generally considered, the educational problem can be tackled, in particular, by encouraging selective collection cooperatives. This is due to the fact that Law 5.764/71, which establishes the national cooperative policy, establishes the FATES (Educational and Social Assistance Fund), which must consist of at least 5% of the net surpluses verified in the year, to include assistance to members and their families. With this background, it is possible that the management of the cooperative itself, which is self-managed, can contemplate educational processes.

Another objective that could be partially achieved through the exemption from tender that would promote cooperatives and selective collection associations would be the fifth SDG, provided there is a female commitment in these collective organizations. Coelho *et al.*, for example, portrayed the health of women recyclers in Rio Grande do Sul, where, in addition to developing work activity, women have to take in charge all domestic duties (and the necessary trips related to them). While conservative cultural aspects still link certain domestic activities to women, which eventually creates overload and exhaustion, work activity can guarantee livelihoods, greater self-esteem and women's empowerment.

SDG 8 is the other relevant point in this analysis: "Promote sustainable, inclusive and sustainable economic growth, full and productive employment and decent work for all". Perhaps this objective, especially in the fulfillment of goal 8.3, is one of the most closely linked to this analysis. The creation of cooperatives and/or associations that will ensure employment so that people can collect, select, classify, sell or benefit from recyclable waste is allied with the purpose of improving the "generation of decent employment" and business activities, in particular encouraging the formalization of small businesses that, even if

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<sup>21</sup> COELHO, A. P. F. et al. "Mulheres catadoras de materiais recicláveis: condições de vida, trabalho e saúde", Revista Gaúcha de Enfermagem, v. 37, n. 3, p.1-8, set. 2016.

they are not expressed as such in the objective, could include collective organizations such as cooperatives and associations.

In relation to SDG 9, the analysis would be favorable in the sense of small industrialization. Selective collection is considered operationally a service. However, if after the collection and separation of recyclable waste, there is the infrastructure to process any of the materials, it could work with the potential to achieve this objective. There are experiences of associations of recyclers that work with small-scale artisanal processing activities to try to obtain greater added value compared to the sale of waste per kilogram to processing companies. It does not appear to be the main objective of SDG 9, but such a framework could "promote inclusive and sustainable industrialization".

By 2030, the empowerment and promotion of social, economic and political inclusion of all<sup>22</sup> is what is established in objective 10.2 that allows the exemption of tendering discussed here to have an impact on SDG 10.

SDG 11 is largely covered by the object of analysis. Not only for the consequences that can be projected to improve the well-being in the cities and / or settlements of the low-income people that will make up the cooperatives and associations, but also for contemplating the reduction of the negative impacts on the cities, particularly in municipal waste management. This type of management should not only address the environmental impacts of conventional (waste) and selective (recyclable) collection, but also the impacts, forms and spaces (urban or rural) of the disposal of such waste. Therefore, by expanding selective waste collection initiatives, by simplifying the form of "sustainable purchase" by public authorities, there would be auxiliary elements to better operate municipal waste management.

Substantially reducing waste generation through prevention, reduction, recycling and reuse is another objective closely related to this proposal. It is estimated that, because of the perception of an effective provision of selective collection, the community tends to seek a better orientation and to separate with greater precision and even reduce household waste.

The impacts of this proposal on SDGs 13, 14 and 15 will be discussed together, as they are indirect consequences of the pollution generated today by poor waste management. The incorrect and uncontrolled disposal of waste

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<sup>22</sup> ONU - ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Transformando Nosso Mundo: A Agenda 2030 para o Desenvolvimento Sustentável. Nova Iorque, 25 set. 2015. Disponível <[http://www.itamaraty.gov.br/images/ed\\_desenvsust/Agenda2030-completo-site.pdf](http://www.itamaraty.gov.br/images/ed_desenvsust/Agenda2030-completo-site.pdf)>. Acesso: 14/10/2019.

generates solid, liquid, gaseous and often toxic waste that, through a natural process, contaminates soils, rivers, oceans, impacts on the climate and the way we live and live with the ecosystem. Therefore, better waste management can indirectly reflect how climate, water and biodiversity react reactively.

Finally, it was noted that the sustainable development goals 6, 7, 16 and 17 would not be directly impacted by the exemption from bidding for selective collection contracting, even if it would stimulate collective organizations formed by low-income people. However, the remaining 13 objectives could be partially addressed with this action, which explains a greater link between the exemption from bidding for selective collection by low-income cooperative partners and partners associated with sustainability. But how challenging is it to achieve all this?

## **5. THE EXEMPTION FROM TENDER FOR THE SELECTIVE CONTRACT OF WASTE COLLECTION FOR LOW INCOME COOPERATIVES AND ASSOCIATIONS - INSTITUTIONAL CHALLENGES**

As can be seen from the above, in the normative field, both in light of the international, national and regional scenarios, the viability of directly contracting cooperatives and associations formed by low-income people for selective waste collection in Brazil can be affirmed. However, in the practical field, there is still resistance to the implementation of sustainability standards in public procurement in general, from simpler situations such as the purchase of paper to the purchase of supplies and computer materials, with a great resistance to include specific and technical requirements in the description of the offer items.

In the case of selective collection by exemption from tendering with cooperatives or associated low-income people, after a reasonable search, there was a relative difficulty in finding specific work in this tool to promote sustainable development. This, however, does not mean that it does not exist, but that the issue is still poorly studied and considered as such. Let us mention here that there are even investigations into other possibilities of direct contracting, as is the case of articles VI, XIII, XX, XXX, XXXIII of article 24 of Law 8.666/93.

In this fingerboard, it is worth mentioning that there are many barriers that stand in the process of fulfilling the commitments assumed by the Federative Republic of Brazil, both for its international and regional performance, and for the normative homeland with respect to the Social Public Procurement (SPP).

Strategically, these barriers can be divided into the following categories:

### ***Policies***

Meta-legal aspects, such as party disputes, industry lobbying, class interests and electoral conveniences that permeate parliamentary decision-making, as wrote Coradini, generally surround the public policy process<sup>23</sup>. This does not necessarily mean that decisions on the public policy agenda are completely dissociated from the common good. The difficulty is to match the typical aspects of the political arena with social, economic and sustainable development.

In this sense, there are even particular impediments that arise from the mere whim of the public administrator who has the final say on the formulation or implementation of a policy. It reaches the point of "doing better than the predecessors", and often fails to continue policies that may have been developed / implemented in former times and steps, even successful, in a vicious circle of "undo to do it again".

On the other hand, even if it has entered the sustainable development policy agenda, selective collection through the renunciation of hiring co-operatives and associations composed of low-income people faces great challenges in the field of implementation, due, for example, to the ferocity disputing the adjudication of an offer of waste collection in the municipalities. In general, valuable contracts are waste collection, school meals, among other great services.

Therefore, to admit the direct contracting of these objects with non-profit entities, even with strong social and environmental gains, is to go against a very strong wave of political-economic power, which often jeopardizes the permanence of the public manager themselves in power. The relationship between representatives in the Brazilian political system and the business community in general is very sensitive, and it is empirical that when corporate interests are at stake, technical analysis tends to give rise to political positions.

### ***Structural / organizational problems***

At the structural level, several other difficulties are important in the process of formulating or even implementing a local policy for the selective

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<sup>23</sup> CORADINI, O. L., "Em nome de quem? Recursos sociais no recrutamento de elites políticas", Rio de Janeiro, Editora Relume Dumara, 2001.

collection of waste by members of low-income cooperatives through the tender exemption. Among many, one of the most important is the chronic and generic lack of capacity of municipalities in the management of public policies. In this sense, the discourse of Abrucio<sup>24</sup>, which points out that, with the elevation of the municipalities to the category of federative entities, much has changed: the provision of various services has become the responsibility of the local government, even without the know-how you should have to do it.

This lack of experience of municipal administrators, together with the aforementioned aspects of the political, economic and social order, favors the lack of interest in the implementation of a policy as proposed in this document. In addition, not only the internal problems of the municipality, aspects of external control are also to be considered in the discussion, both by the judiciary and promoted by the Courts of Accounts and other agencies.

Even if the manager has overcome all the difficulties addressed so far, the challenge remains to reconcile sustainable development with the search for the most advantageous proposal and, what is more difficult, to do so without prejudice to equality.

Equality, in this case, would be fulfilled, as established by Law 8.666/93, in its material aspect, as discrimination or affirmative action, to promote the reduction of the level of poverty of vulnerable and low-occupied families through cooperativism or associativism in the collection, treatment and commercialization of solid waste contracted locally through the exemption from bidding.

In addition to these environmental organization problems, it is worth noting that aspects related to the decision-making process within the context of collective organizations also deserve to be highlighted. In this sense, Sousa addresses aspects of the operation of cooperatives that, according to the author, must operate in a democratic regime, so that each member has the same decision-making power: one member, one vote.

The problem, according to Sousa<sup>25</sup>, is that, despite the burden of self-management in these entities, democracy and transparency, in many cases, constitute a barrier to efficiency, because it requires bureaucracy and a time

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<sup>24</sup> ABRUCIO, F. L., "Os barões da Federação: os governadores e a redemocratização brasileira", São Paulo, Hucitec, 1998.

<sup>25</sup> SOUSA, L. P., "Cooperativismo: conceitos e desafios à implantação da economia solidária", Vitrine da Conjuntura, Curitiba, v.2, n. 2, abril 2009.

for discussion and debate for decision-making while managing an enterprise sometimes requires speedy decision-taking.

These would be, among many others, some of the challenges for the implementation of a policy that harmonizes selective collection by cooperative through direct contracting through the exemption of bidding and sustainable development at the municipal level, as provided in Article 24, point XXVII, of Law 8.666 / 1993.

### ***Economic issues***

Once and if overcoming these essentially political problems, economic impediments appear, and there is opposition to the adoption of sustainable strategies due to the financial cost they represent. Often, the cost-benefit ratio is not even weighed in the course of time in which the purchase of goods or services would be contracted. There is a kind of fear / resistance to achieve the sustainable aspects also by the suppliers themselves, considering the increase in production costs and the low rate of return on capital employed. One comes to the idea of negative economic externalities when it comes to sustainable public purchases from the supplier's point of view.

Interesting in this regard is the comment of Ribeiro and Júnio<sup>26</sup>, who should be noted: many innovations associated with strong social or demands have a low private return rate. In this regard, Keynes (1936) cited in Ribeiro and Júnio, stated that the private rate of return or the rate of internal return (IRR), when compared to the opportunity cost of capital, indicates if the cash flows of a project will be sufficient to remunerate the investments made.

In Brazil, the promotion of selective waste collection involves large investments. According to CEMPRE data, the average cost of selective collection in the cities surveyed was US \$ 102.49 (or R \$ 389.46) per ton. This average cost, compared to the average collection amount of US \$ 25, is remarkably fragile and uninteresting from a strictly financial point of view. The result of this account is that the cost of selective collection remains 4.10 times higher than the cost of conventional collection.

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<sup>26</sup> RIBEIRO, C.; JÚNIO, E. I. "Mensurando o mercado de compras governamentais brasileiro", Caderno Finanças Públicas, Brasília, n. 14, p. 265-287, dez. 2014.

In this context, Korkmaz<sup>27</sup> presents some barriers to the implementation of sustainable purchases, mentions the habit and the difficulty of changing the buying behavior and recognizes that the process and the results are more expensive and time-consuming. This, in a way, seems to be the Brazilian reality, where there is both the high cost of implementing selective collection in relation to conventional collection and the difficulty of equating this level of investment with the return time of the results.

However, it is worth considering that selective collection does not eliminate the need for conventional waste collection. The implementation of a priori selective collection is only an additional cost, since it is an additional activity, until the effects of selective collection can mitigate the common waste produced, in order to reduce / accelerate the conventional collection operation, becoming and generating cost savings on this.

In addition, Article 42 of the PNRS establishes the possibility of credit and credit lines to encourage “III- implementation of physical infrastructure and acquisition of equipment for cooperatives or other forms of association of collectors of reusable and recyclable materials formed by low-income people”. Article 44 of the same law can also allow incentives in projects that involve associations with cooperatives and other types of associations, thus countering the economic/financial limitations discussed here.

### ***Social***

Although not evident, the implementation of a direct contracting policy for the selective collection of waste by poor people also faces social difficulties. For example, the low formal education that accompanies the majority of the vulnerable population, combined with the formalism / bureaucratic barriers typical of the Brazilian Public Administration, creates fertile ground for the resistance of workers to formalize as cooperative or associated.

Unlike other countries, creating a cooperative or even an association in Brazil is not the simplest task, which also increases the level of dependence on public manager action in the implementation of this policy. It is as if there is a “resistance to bureaucracy” by the administration, given the bureaucratic apparatus of Brazil.

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<sup>27</sup> KORKMAZ, A., “Benefits and obstacles of environmental, social and sustainable procurement” Seul, IPPC4, 2010. Disponible en: [www.ippa.org/IPPC4/Proceedings/07GreenProcurement/Paper7-2.pdf](http://www.ippa.org/IPPC4/Proceedings/07GreenProcurement/Paper7-2.pdf) acceso 14/10/2019.

Talking about cooperativism, Sousa reports that, in Brazil, this type of company gains strength mainly from the 1990s, in a scenario of pessimism about the future of labor relations. Not surprisingly, in 2017 there was a profound change in labor rights with the reform produced by Federal Law 13.467. This regulation introduced severe changes in the employment relationship, such as the intermittent employment contract and the suppression of some funding possibilities.

Perhaps, through the repetition of the social framework that occurred in the 1990s, it could revive interest in associativism as a productive model for people who want to reach a minimally balanced position in the economic system. However, this apparent viability also encounters historical obstacles, such as the lack of education already mentioned by many involved in waste collection, the bureaucracy to formalize the entity and, not least, aspects of the decision-making process in the self-management.

To this set of factors contrary to the implementation of selective collection through the exemption of tender by associated people or cooperatives of people without economic capacity, the attachment to archaic mechanisms such as the collection of recyclable materials and food in the streets or in open landfills is added.

The restrictions possibly imposed on the collectors would not only be related to the control of the activities and the benefits that could be obtained, which would certainly occur. It is that behind the mountains of waste, in addition to the support of several families, child labor is hidden, unthinkable conditions of cleanliness and exposure to serious diseases. All these problems, surrounded by the "social walls" of the dump, seem to go unnoticed in the eyes of the state, so it may somehow seem better for those who have become accustomed to this reality.

The resistance to regularization of this form of work was even the object of the work developed by Gondim<sup>28</sup>, when studying the heads of household's perception of child labor in the Pedregal landfill, in Aracati, Ceará, Brazil. The conclusion of the author's interviews was that parents consider that garbage collection is a better job than formal employment, both in terms of profit margin and independence. With regard to child labor, some understand that taking

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<sup>28</sup> GONDIM, L. P. de B. "O trabalho infantil e o lixo: a legislação e a realidade. A visão das famílias catadoras do Pedregal – Aracati", Monografia (Graduação) Faculdade do Vale do Jaguaribe – FVJ. Aracati, 2016.

children to the dump is pedagogical and avoids getting involved with drugs and crime.

In view of this, one can see the challenging nature of both the formulation and implementation of a sustainable purchasing policy that seeks to develop aspects of income for low-income people and improvements in the preservation of the environment. Thus, if in the field of formulation there are political obstacles, corporate interests, etc., in the social field, there is resistance from those who "got used to suffering", attached, as exemplified above, to the routine of landfills.

## **FINAL CONSIDERATIONS**

Direct contracting through the exemption of the tender for the selective collection of waste by the members / associates of the cooperative, in addition to being considered by the National Solid Waste Policy, as an instrument to promote sustainable development, is a viable way to reduce social problems. Consequences, such as extreme poverty, child labor and family work in garbage collection, for example, will have a reduction in incidence by adopting this model locally and, of course, gains in environmental preservation.

When analyzing the objectives of sustainable development in relation to the exemption of bidding to contract associations or cooperatives with low-income people, 13 of the 17 SDGs in the 2030 Agenda could be contemplated or partially discussed. Direct contracting and incentive for collective organizations would lead to an improvement in the quality of life of these hyposufficient people involved.

However, despite its obvious advantages, the implementation of a sustainable local purchasing policy in Brazil has several obstacles. The political, structural / organizational, economic and social aspects stand out. In view of the above, and the undeniable potential that the consumer state has, it is necessary to expand the vision in public management to aspects of sustainability in public administration actions. As the so-called pioneer nations in purchasing have done in Brazil, the road is already, to some extent, open, pointing to mechanisms that integrate the combined efforts of society and the state itself, in order to honor the sustainable public policies that, in a way, contribute to the preservation of the environment and reduce the suffering of the hyposufficient population in Brazilian cities.

It is observed in the Brazilian experience that the discussion about the existence of paradigmatic change in the production of public goods is nonexistent. Solid waste recycling is the most advanced example of the collective production and management of a public good (recyclable waste) that exists throughout Latin America. However, this example is still insufficient to assert that the development of a commons theory in Brazil is ongoing.

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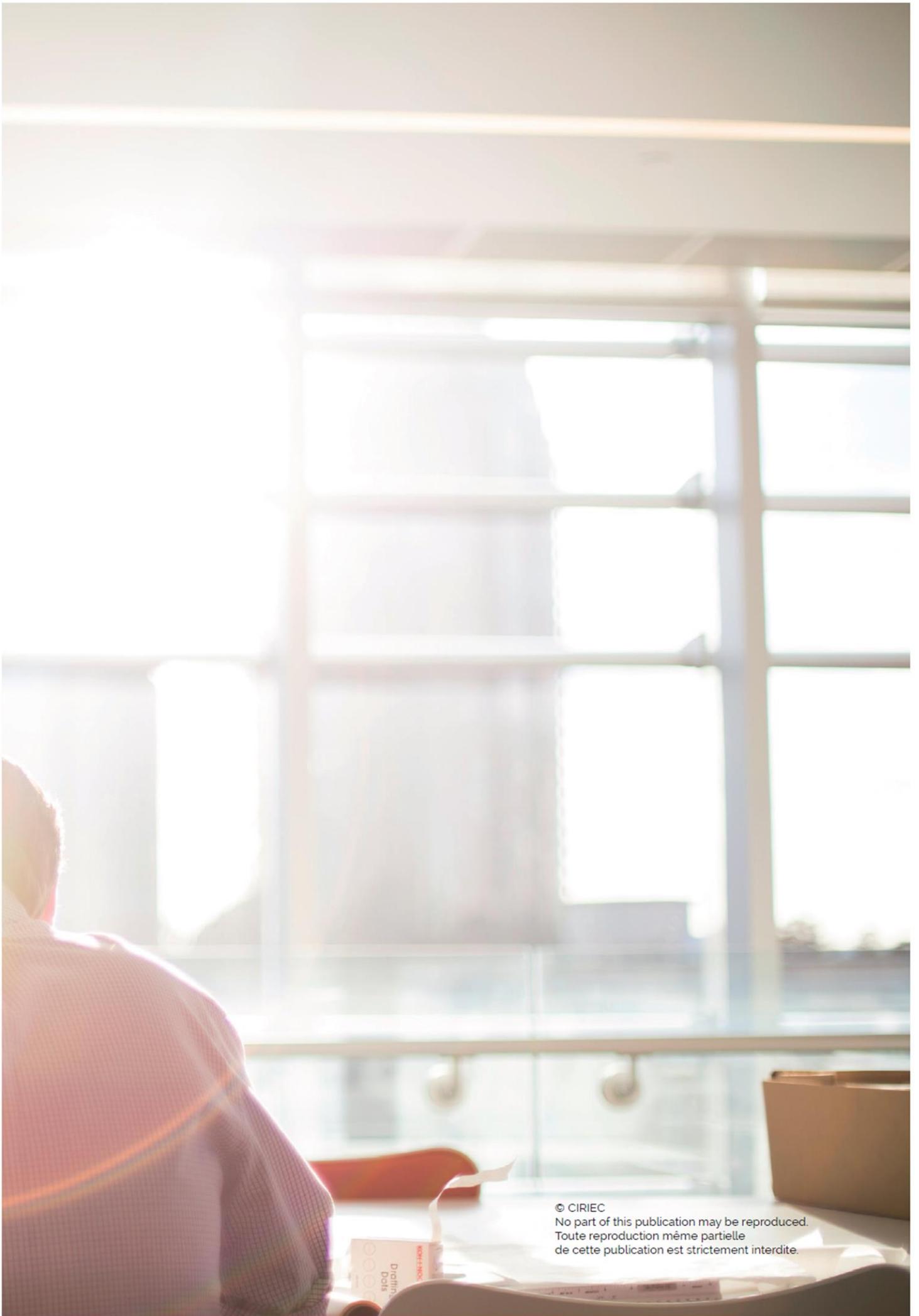
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