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# ALIGNING PUBLIC PROCUREMENT RULES AND PRACTICES TO SUPPORT THE IMPLEMENTATION OF HOME-GROWN SCHOOL FEEDING (HGSF) INITIATIVES: The case of Ethiopia

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# ALIGNING PUBLIC PROCUREMENT RULES AND PRACTICES TO SUPPORT THE IMPLEMENTATION OF HOME-GROWN SCHOOL FEEDING (HGSF) INITIATIVES: THE CASE OF ETHIOPIA

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## INTRODUCTION

This report aims to inform on the alignment of public procurement rules and practices to support the implementation of government-led Home-Grown School Feeding (HGSF) initiatives in Ethiopia. HGSF can be understood as a school feeding model that is designed to provide children in schools with safe, varied and nutritious food which is sourced locally from smallholders<sup>2</sup> (FAO and WFP, 2018).

The report builds on the experiences of various countries and is based on a recognition that building a linkage between school feeding programmes and local and smallholder agriculture production requires adjustments and reforms at the institutional, policy and regulatory levels. These include the alignment of public procurement laws, regulations and related practices.

The report is part of the project GCP/GLO/775/IT on 'Policy Support for Public Food Procurement for Government-led Home-Grown School Food initiatives' and of the Food and Agriculture Organization's (FAO) support for the 'HGSF procurement guideline development' Core Team Committee established in Ethiopia. This Committee has the objective of supporting the development of a conducive and appropriate regulatory framework for HGSF – which enables farmer cooperatives or associations to supply quality food products to schools on time while complying with national public procurement rules and principles – by developing or adapting public procurement directives at the federal and regional levels.

The report is organized in four main sections:

**Section one** provides an overview of the multiple potential benefits of linking school feeding programmes to local and smallholder agricultural production, and also of the series of conditions that this linkage requires. These include a conducive legal framework. Building on different country-context experiences, it highlights the importance of a conducive public procurement regulatory framework and identifies the key challenges that standard public procurement rules and practices impose to the implementation of HGSF initiatives.

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<sup>1</sup> The report has benefited greatly from contributions made by Florence Tartanac (ESN Senior Officer), Cristina Scarpocchi (GCP/GLO/775/ITA Project Coordinator), Israel Klug (ESN Programme Officer) Shawel Moreda (FAOET National Consultant), Florence Tonnoir (FAOET Nutrition Policy & Governance Advisor) and Teclé Hagos Bahta (Professor of Law, Mekelle University - Ethiopia).

<sup>2</sup> Even if only a proportion of food is purchased locally from smallholder farmers, a school feeding programme can still be considered 'home-grown,' provided that local purchases are designed to support and encourage local agriculture and food markets, and that these objectives are taken into consideration during the programme design and implementation and are institutionalised in the relevant policies and regulations (FAO and WFP 2018).

**Section two** focuses on the Ethiopian experience. It provides an assessment of Ethiopia's standard public procurement rules and practices and of current HGSF initiatives. In particular, it analyses the key challenges that standard public procurement rules and practices present when implementing HGSF initiatives in this specific country context.

**Section three** discusses the various tools and instruments that can be used to align public procurement rules and practices and overcome the challenges identified. First, it presents best practices at the international level, exploring the various mechanisms adopted in selected countries to support smallholder farmers and their organizations through school feeding initiatives at three different levels: preferential procurement schemes; other legal tools; and administrative adjustments. Second, it analyses the implementation of similar instruments in the Ethiopian context, but for a different type of beneficiaries: small and micro enterprises.

Building on these analyses, **Section four** provides specific recommendations for the development of a conducive and appropriate public procurement regulatory framework to support the implementation of HGSF initiatives in Ethiopia.

The report uses data from both primary and secondary sources. It combines a desk review of the relevant literature, reports and case studies on the subject with primary data and expert opinions from the country experience. It includes opinions and contributions from the HGSF Procurement Guideline Development Core team and its field observation reports. The opinions were collected mainly in semi-structured interviews conducted in Ethiopia in April 2018.

## 1. HOME GROWN SCHOOL FEEDING INITIATIVES: LINKING SCHOOL FEEDING TO LOCAL AND SMALLHOLDER AGRICULTURE

### 1.1. Why link school feeding programmes to local smallholder agriculture?

Linking school feeding programmes to local and smallholder agricultural production (i.e. the Home-Grown School Feeding approach) constitutes an opportunity to multiply the benefits of regular school feeding programmes. As has been demonstrated in different country experiences, in addition to educational and food security benefits for schoolchildren, this linkage has the potential to improve the livelihoods of smallholder farmers and local communities and to strengthen the nexus among nutrition, agriculture and social protection.

A key characteristic of HGSF is that it has the potential to influence both food consumption and food production patterns through choices of (i) the food to be purchased (such as local, varied, nutritious, healthy, culturally appropriate); (ii) from whom (e.g. from local and smallholder farmers and/or small and micro local food enterprises, women, youth and/or other vulnerable groups) and (iii) from which type of production (e.g. from agricultural production that ensures environmental sustainability and biodiversity). It therefore has the potential to increase the benefits and beneficiaries of school feeding initiatives, including not only those who receive and consume the food but also those who produce it and the local community (Global Panel, 2015; 2016; UNSCN, 2017; FAO and WFP, 2018).

This approach has been clearly recognized in the forthcoming Ethiopian National School Feeding Strategy, which provides a new framework for the implementation of a national school feeding programme. The Strategy states that one of the objectives of the programme is to provide a stable and predictable market to local farmers as an incentive to increase diversified agricultural

production and productivity and create employment opportunities for women and young people, thereby sustainably increasing their incomes (Ethiopian National School Feeding Strategy, n.d).

The approach is also aligned with the scope of international and regional policy frameworks, including the particular emphasis on it in the African ones, which cover Ethiopia. These include the New Partnership for Africa's Development (NEPAD)'s Comprehensive Africa Agriculture Development Programme (CAADP), which recognizes the linkage between school feeding programmes and local smallholder production as a “win-win initiative – for both children and farmers” – able to promote food security and rural development. They also include the AU Malabo Declaration on “Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods,” in which HGSF is recognized as a key strategy to reach its overall objective of ending hunger in Africa by 2025 (Malabo Declaration, 2014).

The key benefits of the HGSF approach that are particularly relevant in the Ethiopian context include:

**(i) Supporting local agriculture and smallholder farmers.** Depending on the choice of from whom food should be purchased, institutional food procurement programmes (IFPPs) – including HGSF – can become instruments to support local and smallholder agricultural production and stimulate community economic development. Several studies demonstrate that a regular and predictable demand for smallholder farmers' products from schools and other public institutions can encourage farmers to increase and diversify their agricultural production and at the same time reduce the investment risks involved. This may contribute to increasing their incomes and their access to formal markets (Drake et al, 2016; FAO, 2015; FAO & WFP, 2018; Global Panel, 2015b; IPC & WFP, 2013; Kelly & Swensson, 2017; Sumberg & Sabates-Wheeler, 2010; UNSCN, 2017).

HGSF also has the potential to **(ii) generate benefits for a range of actors along the value chain.** HGSF can constitute an important **market opportunity for small processors and micro, small and medium food enterprises**, which may supply schools with nutritious processed food products such as bread, biscuits, fruit jelly and fortified cereal mixes, as in the cases of Brazil and India (FAO and WFP, 2018; Global Panel, 2015). As women and/or young people often own these enterprises, HGSF can also contribute to increased youth empowerment and gender equity, which are among the Ethiopian government's priorities. The benefits to local communities may also include local job creation in support of food delivery and the preparation of school meals (FAO and WFP, 2018).

HGSF can also **(iii) promote cooperatives or farmers' associations**, which may enhance farmers' ability to connect with markets. Data from Zambia, Brazil and Ethiopia's pilot initiatives show that membership and cooperative capacity have grown due to farmers' organizations participating in HGSF and their positive impact on market access (Kelly & Swensson, 2017; WFP et al, 2016). This is particularly relevant in Ethiopia's country context considering the great emphasis that the government has placed on promoting cooperatives in its effort to transform the agricultural sector, and it is one of the main organizational vehicles for enhancing food security and reducing rural poverty (Tefera et al, 2017).

HGSF also has the potential to **(iv) enhance food security and the nutrition of schoolchildren and also of smallholder farmers and their communities.** By defining what food is to be purchased (such as safe, nutritious, varied and locally produced food) school feeding initiatives can become powerful instruments to enhance food security and the nutrition of children and

also of smallholder farmers and their communities, through increased and diversified food production, consumption and incomes. Diversified school feeding programmes can, indeed, have a direct effect on schoolchildren's food consumption, dietary diversity and nutrition status (FAO & WFP, 2018). Studies from countries like Brazil, Kenya and Ghana show that properly designed school feeding can lead to an increase in the variety and quantity of healthy foods served in schools, and to improvements in the dietary diversity of schoolchildren (Niebylski et al, 2014; Sidaner et al, 2012; UNSCN, 2017).

Considering the weight of public sector contracts, a diversification of the demand – especially when linked to purchasing from local and smallholder producers – has the potential to also stimulate production diversification by these actors.<sup>3</sup> This may lead – according to the context – to an increase in smallholder farmers' consumption of diversified and nutritious food. (Biodiversity International, 2016; HLPE, 2017; IPES, 2016; Niebylski et al, 2014). This may apply to the Ethiopian context, in which local agricultural production and dietary consumption are closely coupled (IFPRI, 2018). Production diversification may also lead to an increase in the availability of diversified products on local markets. Thus, depending on the choice of products to be purchased, HGSF has the potential to diversify the diets of children, farmers and local communities by promoting the production of, and access to, a wider variety of foods. This is very relevant in Ethiopia, considering the need to improve the dietary diversity in the country (IFPRI, 2018).

HGSF can also target food that is produced in a specific way and therefore use its purchasing power to **(v) support and promote forms of agricultural production that ensure environmental sustainability** (Foodlinks, 2013). This includes, for instance, also using the school demand for food to support agroecology- and biodiversity-attuned practices.<sup>4</sup>

Considering all these multiple benefits of HGSF, it is possible to affirm that HGSF programmes can provide a direct contribution to the implementation of various government policy goals, linked not only to the education sector but also to agriculture, health, labour and social affairs.

In the specific case of Ethiopia, linking the school feeding programme to local and smallholder agricultural production can therefore constitute an important instrument to support the implementation of the Nutrition-Sensitive Agriculture Strategy and its objectives of increasing the production, availability and consumption of varied, safe and nutritious food. It can also constitute an important tool for the implementation of the Growth and Transformation Plan II (GTP II), which articulates the Government of Ethiopia's long-term vision to achieve sustainable national food and nutrition security and become a middle-income country by 2025. The GTP also foresees a central role for agricultural cooperatives in increasing the productivity and household incomes of smallholder farmers (MoFEC; ATA 2013).

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<sup>3</sup> In Ethiopia, for instance, an increase in the diversification of commodities being planted and offered locally was already assessed as a result of the HGSF initiative in the country (WFP, PCD & Dubai Cares, 2016; WFP, 2018). A study of the HGSF Pilot Programme in the Southern Nations Nationalities and People's Region (SNNPR) demonstrates that this increase was led by the substantial demand from schools, which served as a guarantee for farmers who would otherwise be reluctant to plant new crop types (WFP, 2018).

<sup>4</sup> In Brazil, for instance, these products take precedence over conventional produce in its National School Feeding Programme (PNAE) purchasing with the aim of promoting ecological and organic production. They can also command higher prices (up to 30% more) than conventional products.

In addition, the assumption that HGSF can multiply the benefits of regular school feeding programmes and provide a direct contribution to the implementation of various government policy goals is also supported by economic data that show that HGSF programmes in Ethiopia can represent a three-fold return on investment, with a high cost-benefit ratio. Economic modelling developed by the World Food Programme (WFP) and applied to Ethiopia shows that every USD 1 invested in home-grown school feeding brings an economic return of USD 7.2, including value to farmers. This value is much higher than the estimated USD 3.1 return for regular school feeding programmes (WFP, 2018).

## 1.2. The importance of a conducive regulatory framework

Despite its great potential, building the linkage between school feeding programmes and local and smallholder agricultural production is not a simple process. It requires a series of conditions that must be coordinated and matched together. These conditions depend on – but go far beyond – government will and the availability of demand. They are linked to demand- and supply-side factors and also to the policy, legal and institutional enabling environment (Kelly & Swensson, 2017; Smith et al, 2016). They include, with particular relevance, a conducive regulatory framework (Swensson, 2018).

There are various laws and regulations that are relevant to the development and implementation of HGSF initiatives. Examples include trade and agriculture laws, education legislation, food safety legislation and standards, social protection laws, human rights legislation, nutrition standards and health legislation (FAO, *forthcoming*). They also include, and with particular relevance, the public procurement regulatory framework,<sup>5</sup> which is the focus of this report.

Indeed, one of the key characteristics of public food procurement initiatives (including HGSF ones) is that, just like any type of public purchase, they are operationalized and regulated by specific and detailed rules. These (public procurement) rules govern the entire procurement process, shaping and limiting the choices available to governments regarding (i) the food to purchase; (ii) how to purchase it; and (iii) from whom to purchase it. As a result, the objectives and implementation of any government-led HGSF initiative are intrinsically linked to and require an aligned public procurement regulatory framework.

Various studies and country experiences demonstrate the challenges that standard and unaligned public procurement rules and practices may pose to the implementation of HGSF initiatives aimed at also using public food procurement as an instrument to support local and smallholder agricultural production (Brooks et al, 2014; De Schutter, 2014; 2015; FAO, 2013; 2015; Kelly and Swensson, 2017; Swensson and Klug, 2017; Swensson, 2018). Examples from the African continent include the SNV project on Procurement Governance for Home-Grown School Feeding (PG-HGSF), which was implemented in Mali, Kenya and Ghana. According to the findings from this project, public procurement regulations and practices that did not factor in the situation of the region's smallholder farmers constituted one of the main reasons why these countries were not fully successful in sourcing produce obtained from local smallholders in their school feeding programmes (Brooks et al, 2014). Similar conclusions have also been presented

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<sup>5</sup> The term 'regulatory framework' used in this publication comprises all public procurement laws and regulations, legal texts of general application and administrative rulings made in connection with public procurement.



for Mozambique in a study on the impact of the policy, institutional and legal enabling environment for the implementation of decentralized (school) food procurement programmes developed within the Purchase from Africans for Africa Project (PAA) (Swensson and Klug, 2017).

The main obstacles identified which are linked to the public procurement regulatory framework include: (i) overly complex and burdensome bid procedures (i.e. methods); (ii) over-emphasis on price as the awarding criterion (to the detriment of quality and other socio-economic values); (iii) disproportionate and onerous participation requirements; (iv) incompatibility between contract size and the supply capacity of small-scale operators; (v) a lack of information (regarding tender opportunities and notices of contract awards); and (vi) long payment periods. Although some of these aspects of the process of public procurement may also affect large suppliers, it is widely recognized that they affect small-scale suppliers more acutely (Brooks et al, 2014; Trybus, 2014; World Bank Group, 2017).

As smallholder farming is generally constrained by financial capacity and other production factors, including the capacity to obtain information on market prices and public procurement opportunities, it is unlikely that small farmers and farmers' organizations will be able to participate in public procurement, or any other similarly stringent market, if some of the constraints are not addressed.

The relevance of a conducive regulatory framework and of the challenges presented by an unaligned public procurement regulatory framework to linking school feeding initiatives to local and smallholder agricultural production has also been assessed in Ethiopia in the implementation of its existing HGSF initiatives. These will be analysed in section two.

## 2. PUBLIC PROCUREMENT AND HGSF INITIATIVES IN ETHIOPIA: STANDARD RULES, PRACTICES AND CHALLENGES FACED

### 2.1. Public procurement rules and practices in Ethiopia

Public procurement is regulated at the federal level in Ethiopia by the Federal Government Procurement and Property Administration Proclamation (n. 649/2009) and the 2010 Federal Public Procurement Directive. Based on a federal system, all the states and the two cities have the power to legislate and regulate their own procurement systems. Nevertheless, these regulations traditionally mirror what is stated in the federal regulations.

Similarly to most public procurement systems in the world, public procurement regulation in Ethiopia has been put in place to achieve a series of objectives (Bahta, 2013). These are, according to the Federal Proclamation and Directive: (i) the maximum value for money in procurement; (ii) no discrimination among candidates on the ground of nationality or other reasons which are not related to the evaluation criteria, except in accordance with the rule of preference provided in the proclamation; (iii) supporting the country's economic development by ensuring economy, efficiency and effectiveness in the execution of public procurement; (iv) transparency; and (v) ensuring accountability for decisions made and measures taken in the execution of public procurement. Among the objectives there is also to (vi) encourage local producers, companies and small and micro-enterprises which support the national economy. This objective is in line with an increasing worldwide recognition of the use of public procurement to achieve broader development goals (Watermeyer, 2004; McCrudden, 2004; Sumberg and Sabates-Wheeler, 2010; Arrowsmith, 2010; Quinot, 2013, Uncitral, 2014; UNEP, 2017).

Except for defence procurement, these objectives apply to all federal and state government funded public bodies and public enterprises alike.

### 2.1.1. Procurement methods and awarding criteria

Following the best international practices (in particular the United Nations Commission on International Trade Law – UNCITRAL – Model Law on Government Procurement), the regulation in Ethiopia recognizes different types of procurement methods that procuring entities must use for the procurement of goods, work and services to achieve the stated procurement objectives. These methods are:

**(i) Open bidding:** This procurement method – also known as ‘competitive bidding’ or ‘open’ or ‘competitive’ tendering – is, as in most countries in the world, the default procurement method that public entities should use for the procurement of goods, work and services. It is characterized by its high level of competition, an equal treatment of suppliers (meaning that any qualified person can have their bid considered) and transparency. It is also characterized, however, by a high level of formalities, complexity and costs. Box 1 provides an overview of the key characteristics of the open bid method.

#### **Box 1: Key characteristics of the open bid method**

- A public notice advertising the procurement;
- Use of a detailed specification that provides a common basis for bidding and for comparing all bids;
- A single stage of tendering with fixed dates and times for the submission of tenders;
- A requirement for bids to be in writing, signed and in a sealed envelope, or in an electronic form that provides equivalent safeguards of confidentiality etc.;
- A public opening of the bids;
- A requirement to award the contract to the supplier submitting the best bid (often meaning the lowest price), with no possibility of negotiating bids with suppliers or of allowing amendments (except to correct certain errors that are not of a substantial nature).

Procuring entities may also conduct pre-qualification proceedings to limit the bids to ones from suppliers who meet the conditions for participating in the procurement.

*Source:* adapted from Arrowsmith, 2011.

In using this procurement method, procuring entities in Ethiopia should use the standard bidding documents prepared by the Federal Public Procurement and Property Administration Agency (hereafter, the Agency) and follow the rules established in the Directive, which set strict formalities for each phase of the procurement process. According to these rules, procuring entities must advertise the invitation to bid at least once in a newspaper that has nationwide circulation in order to ensure the participation of as many bidders as possible. The opening of the bids must be public and must be fixed in time (after the deadline for submissions) and considerable time should be provided for the submission of bids. Negotiation between the procuring entity and suppliers is strictly prohibited.

Interested suppliers must purchase and use the standard bidding documents in order to participate. They must also register on the Agency supplier list, comply with a long list of participation requirements (discussed below) and provide bid security (from 0.5% to 2% of the total estimated contract price).

Regarding the awarding criteria, the default awarding criterion is the lowest price evaluated among the suppliers who meet the requirements requested (in terms of quality, quantity, terms and time of delivery). In the case of the open bid, the procuring entity may also award contracts based on other criteria. This is referred to as ‘the most economically advantageous’ bid. These criteria must be “ascertained on the basis of factors affecting the economic value of the bid which have been specified in the bidding documents, which factors shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable” (Federal Proclamation, art. 8 (b) ).

The entire process for the procurement of goods using the standard open bidding method may take at least two months (interviews).

**(ii) Request for quotation:** This procurement method – also known as ‘pro forma tendering’ – is a much simpler procurement procedure. The adoption of this method is in line with international practices which recognize that, in certain circumstances (such as in an emergency and low cost procurement, but also in pursuit of horizontal policy goals) the time and costs of using the open bid method may outweigh the benefits (especially in terms of greater competition) it could bring to the system and/or would prejudice the government’s ability to meet its needs (UNCITRAL, 2014).

In using this procurement method, the procuring entities should identify potential suppliers (no less than 3, as far as possible) and directly send them a request for a quotation. The procuring entity must also assess the market price of the products to be purchased, referring to a price list posted on the Agency’s website and conducting a price survey.

Once the procuring entity receives the quotations, it should compare the proposals and select the one with the lowest price, ascertaining that the price offered is commensurate when compared to the market price. In the case of the request for quotation method, the lowest evaluated price is the only awarding criterion allowed (Directive, art. 24.6). No price negotiation is allowed and the price quoted by the interested supplier in their proposal cannot be changed.

Once the best offer is selected, there is no need to sign a contract. The request sent by the procuring entity and the quotation sent by the suppliers represent the contract between the two parties. Furthermore, interested suppliers do not need to be registered on the Agency suppliers list in order to participate in a procurement process through request for quotation. Due to its greater simplicity, the entire procurement process using a request for quotation may take around 15 days (interviews).

As mentioned above, the use of this method – and of any other alternative method to the open bid – is limited to certain circumstances. In the case of request for quotation, these circumstances include, in particular, the procurement of readily available goods with the estimated value of the contract falling below an established threshold (currently set at birr 200,000.00).<sup>6</sup> It is interesting to note that the use of the request for quotation method is also allowed for the procurement of food for higher education institutions to feed their students, which is established by a special Directive. As will be discussed in section three, this Directive recognizes the challenges that the standard open bidding method may impose in this type of procurement and allows the use of alternative and simpler procurement methods.

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<sup>6</sup> Exchange rate on 9 January 2019: one birr = US\$0.03551.

**(iii) Direct procurement:** This procurement method – also known as ‘single source procurement’ – is the simplest of all the procurement methods.<sup>7</sup> In this method, the procuring entity can approach a single supplier and present the description of its needs and the requirements of the supply (i.e. quality, quantity, terms and time of delivery). Unlike all the other procurement methods, the procuring entity can negotiate the price and conditions of the contract with the candidates. The Directive requires that the procuring entity must assess the price and other issues relevant to the negotiation, and ascertain that the supplier’s proposal does not violate the provisions of the Proclamation or of the Directive. The agreement reached by the two parties must be confirmed in a written contract signed by both.

On the one hand, this procurement procedure presents great simplicity. On the other, however, it has limitations regarding the principles of competition, equal treatment of suppliers and transparency. It can therefore only be used in specific cases when, as mentioned above, it is considered that the time and costs of using the other methods may outweigh the benefits it could bring to the system and/or would prejudice the government’s ability to meet its needs. These include, among others: urgent situations in which delay would harm the public interest ; when the goods can only be supplied by one candidate; when the value of the procurement is low and falls below the birr 5,000 threshold for a single contract (and not exceeding birr 75,000 within the fiscal year). Both the Proclamation and the Directive define the various cases in which this procedure can be adopted.

In all these cases, the procuring authorities must ensure that this method is not used with the intention of avoiding possible competition or in a manner which would constitute a means of discrimination among candidates.

Similarly, the Directive on food procurement for higher level education institutions allows for the use of direct procurement in cases in which the food product to be purchased is only available from one national supplier.

Other procurement methods (which are less relevant to the topic of this report) include: **(iv) the Request for proposal** (for contracting consultancy services) and two variants of the standard bidding method, i.e. **(v) Two-stage bidding** and **(vi) Restricted bidding** (which includes changes mainly to the procedures related to the invitation to bid and to the opening of the bids).

Furthermore, on a request by the procuring entity justified on sound grounds the Agency is entrusted with the power to permit the use of a procurement procedure which is not consistent with the methods described above. This permission, however, can only be given in exceptional cases and only for a one-off procurement.

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<sup>7</sup> Within the category of Direct Procurement are ‘shopping’ and ‘small-value’ (micro) procurement. Shopping is used exceptionally to purchase goods that, regardless of their price, are necessary for the purposes of studying and research services where it is impractical to obtain them on the market or whenever the purchase is deemed to procure pecuniary benefits for the procuring entity. The ‘small-value procurement’ method is limited to situations where (i) goods or services below a maximum price threshold of birr 1.500 (at a time) which have not been pre-planned are urgently needed; or (ii) goods or services that are necessary to overcome any problems or accidents encountered in field work. In each case, the total purchase cannot exceed birr 30,000 per annum (Bahta, 2013).

### 2.1.2. Contract size

Large and complex contracts (for instance, requiring a large volume and a large variety of products) may be incompatible with the capacity of smallholder suppliers and become important barriers against their access to public food markets.

As a general rule, Ethiopia's regulatory framework forbids the division of contracts into smaller lots to artificially push the contract value below the thresholds with the intention of avoiding the preferred procurement procedure (i.e. the open bidding method). Nevertheless, the framework requires procuring entities to organize procurement in such a way as to open up opportunities for as many local producers as possible to participate in the procurement (Directive, Art. 9.3).

### 2.1.3. Participation requirements

In order for a candidate to participate in public procurement it must comply with a series of requirements. These requirements are designed with the aim of ensuring that suppliers have the capacity to perform the contracts. Nevertheless, when the requirements are out of proportion and involve a high level of bureaucracy and costs they can represent an important barrier against access to public markets for smallholder suppliers. This is particularly the case for smallholder farmers and their organizations.

In Ethiopia, with a few exceptions, which will be discussed in section three, interested suppliers must demonstrate that they meet all of the following conditions in order for them to participate in the public procurement process: (i) they have the necessary professional and technical qualifications, competences, financial resources, managerial capability, experience in relation to the subject matter of the procurement, reputation and personnel to perform the contract; (ii) they have the legal capacity to enter into the contract; (iii) they are not insolvent, in receivership, bankrupt or being wound-up, and that their business activities have not been suspended, and they are not subject to legal proceedings for any of these purposes; (iv) they have not been suspended or debarred from participating in public procurement; (v) they are registered on the supplier list; (vi) they have an up-to-date trading license and tax-clearance certificate; and (vii) they have a bank account. In instances where the value of the procurement exceeds birr 100,000, suppliers must also have a VAT registration certificate.

Furthermore, in the case of the open bid procedure, interested suppliers must purchase and pay for the bid documents and also provide a bid security deposit, which has the purpose of protecting procuring entities against bidders withdrawing their bids prior to the end of the bid validity period, or refusing to sign the contract.

The 'instruction to bidders' must specify and inform the potential candidates of these requirements and any other additional criteria that must be complied with.

### 2.1.4. Access to information

Facilitating access to information about tendering opportunities is key to guaranteeing access by the target beneficiaries, including local smallholder farmers, to public markets. Traditional advertisement methods (such as official bulletins) are generally little accessed by smallholder actors and can constitute an important barrier against their participation in these markets. The language adopted can also constitute a barrier in certain country contexts.

In Ethiopia the advertisement method differs according to the procurement procedure adopted. As mentioned above, in the case of an open bid, the invitation to tender must be published at least once in a national newspaper that has a nationwide circulation in the same language as

that of the bidding document. Procuring entities are also allowed to use additional instruments if they find it necessary, such as national radio and television. Except for the case of international procurement, the invitation to bid and all the procurement proceedings are processed in the Amharic language (the working language of the federal government) or in a regional state's official working language (Bahta, 2013).<sup>8</sup>

In the case of the request for quotation and direct procurement methods, as mentioned above, procuring entities may contact potential suppliers directly, thus avoiding a public advertisement of the invitation to tender.

It is important to note that in Ethiopia unsuccessful bidders are individually notified of tender results and can obtain feedback on the reasons they have not won (World Bank, 2017). This is a good practice in the Ethiopian system which can contribute to access by smallholder suppliers to public markets (Brooks et al., 2014).

#### 2.1.5. Payment timeframe

It is widely recognized that long payment timeframes hinder participation in the public procurement process, especially for small-scale suppliers that struggle with limited cash flow (World Bank, 2017). Furthermore, if payments are delayed trust in the buyer will be lost, not only that of the farmer, cooperative or enterprise concerned but also more widely among other potential suppliers through word of mouth (Kelly and Swensson, 2017). Instruments to shorten payment timeframes are considered to be of key importance in supporting the implementation of public food procurement initiatives targeting smallholder farmers.

In Ethiopia, there is a legal timeframe for the procuring entity to process the payment: 18 days (World Bank, 2017). This is quite a short timeframe compared to other countries (See World Bank, 2017). Nevertheless, in practice the time for the supplier to actually receive the payment may be significantly later, as will be discussed in section 2.3.

## 2.2. Home-Grown School Feeding initiatives in Ethiopia

Ethiopia currently has two main HGSF initiatives being implemented which share the objective of linking schools' demand for food with local and smallholder agricultural production:

### 2.2.1. The 'HGSF pilot initiative'.

This initiative started in 2012 in the Southern Nations, Nationalities and People's Region (SNNPR) through a partnership among the Ministry of Education (MoE) and technical partners, including the WFP and the FAO. The initiative tapped on the support of the WFP's Purchase for Progress Programme (P4P)<sup>9</sup> and on the joint Purchase from Africans for Africa (PAA Africa) programme<sup>10</sup> with the aim of: (a) linking the existing school feeding programme demand

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<sup>8</sup> Exceptionally, procuring entities may prepare tender documents in English and permit the submission of tenders in English (instead of or in addition to Amharic) even if only local bidders participate, provided that the use of the language expedites the procurement process without being prejudicial to fair competition (Bahta, 2013).

<sup>9</sup> Purchase for Progress (P4P) is a WFP pilot initiative launched in 2008 in 20 countries. Its main aim is to "pilot and learn from innovative programme and food procurement activities that have the best potential to stimulate agricultural and market development in a way that maximizes benefits to low-income smallholder farmers" (see <<http://www1.wfp.org/purchase-for-progress>>). Through P4P, the WFP aims not only to provide a stable demand for smallholder producers through a smallholder-friendly procurement system, but also to support capacity-building at the country level.

<sup>10</sup> The PAA Africa was a joint initiative of the FAO, the WFP, the Brazilian government and the United Kingdom's Department for International Development (DFID), implemented between 2012 and 2017 in

with local agricultural production by providing locally produced food purchased from smallholder farmers; (b) building the capacity of the government to plan and manage sustainable school feeding programmes in the country.

Currently, the HGSF pilot initiative operates in two regions, SNNP and Oromia, covering 238 schools and benefiting around 139,000 students (WFP, 2018). The implementation of the programme is decentralized at the regional level and the regional Bureau of Education (BoE) is the entity responsible for food procurement. A mixed implementation model with decentralization at the school level for the procurement of certain types of products (fresh ones) has been discussed, although it has not yet been implemented (ATA, 2013; interviews).

For procurement, funds are transferred (initially from the WFP, but increasingly also from the regional government) to the regional BoE. The procurement of food is done from Cooperative Unions (CUs), which supply primary foods produced by their members, or act as intermediaries to supply vegetable oil and iodized salt (WFP Ethiopia Report, 2018). Although the programme aims to provide a fully diversified menu, the current food basket consists mainly of cereals and pulses. Some fresh products (such as vegetables and fruits) are reported to be provided in schools with school gardens, although not in a consistent and/or systematic manner (WFP Ethiopia Report, 2018; interviews).<sup>11</sup> For the time being there is no procurement of fresh products, although the importance of providing a more diversified menu with fresh products is recognized, especially given the aim of increasing the impact of the programme on the food security and nutrition status of schoolchildren and also because of its potential to support diversified production and market access for smallholder farmers.

Considering that the production of vegetables can generate three to five times higher economic returns than that of grains and pulses in Ethiopia, a secure and substantial demand for these products could represent significant increases in income for smallholder farmers (ATA, 2013). Nevertheless, it is also recognized by the key stakeholders that the procurement of fresh products would require a more decentralized implementation model – at the municipality or school level – accompanied by adequate institutional capacity, infrastructure and procurement modalities (ATA, 2013; WFP Ethiopia Report, 2018, interviews).

### 2.2.2. The 'Emergency HGSF programme'

The Emergency HGSF programme is the most recent and the largest HGSF initiative in Ethiopia. It was first implemented in 2015 with the aim of providing emergency food supplies in selected drought-affected areas to curb drought-induced school dropouts. Like the HGSF pilot initiative, the Emergency programme aims to procure food products from local smallholder producers through their cooperatives (interview, MoE).

One of the key distinct characteristics of the two programmes is the areas targeted. While in the HGSF pilot initiative these are constant (the SNNP and Oromia regions), the Emergency HGSF programme may each year cover different areas affected by drought and selected by the MoE.

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five African countries (Ethiopia, Senegal, Malawi, Niger and Mozambique). It had the objective of promoting food security and income generation among vulnerable populations by combining institutional food purchases from smallholders for school feeding and production support activities to strengthen local food systems.

<sup>11</sup> In the SNNPR region, for instance, the regional BoE HGSF menus include two daily ration options for students. Ration 1: 100g boiled maize, 40g red kidney beans, vegetable oil and salt; Ration 2: 120g boiled *kinche* (maize or wheat grits), vegetable oil and salt.



Currently the programme is being implemented in 10 drought-affected regions (including the SNNP and Oromia regions), benefiting around 1.8 million children (interview).

In the first year, the programme was implemented at a central level, with procurement managed by the MoE. From the second year onwards, the implementation was decentralized to the regional level. Funds are transferred from the federal government to the regional BoEs, which are responsible for the procurement activities.

Regarding the food basket, although ideally the schools should provide a diversified and locally appropriate menu, in practice, as in the HGSF pilot initiative, the food provided is still mainly based on grains and pulses. As in the HGSF pilot initiative, in some schools children may receive a more diversified meal with fresh products produced in the school gardens.

### 2.2.3. Other school feeding initiatives

Besides these two initiatives, there are other types of school feeding initiatives in Ethiopia. However, these do not share the objective of the HGSF ones of linking the school meals programme with local and smallholder agricultural production. They include the WFP-supported in-kind school feeding programme (implemented since 1994 and currently benefiting 292,249 students in 570 schools), the First Lady School Meals initiative (implemented since 2017 in 203 of the 2020 schools in Addis Ababa but not targeting all the students in the schools) and other smaller initiatives supported by NGOs (WFP, 2018; interviews).

## 2.3. Procurement procedures and practices adopted by the HGSF initiatives

One of the key characteristics of Ethiopia's HGSF initiatives is that as they were initially funded by donors they were able to adopt their own procurement procedures and not necessarily follow the standard procurement rules imposed by the public procurement regulatory framework. This possibility was authorized by a Federal Government Procurement and Property Administration Proclamation.<sup>12</sup>

This is particularly the case of the HGSF pilot initiative, the first HGSF initiative implemented in Ethiopia. This was implemented on the basis of a Memorandum of Understanding (MoU) signed by the WFP, the regionals BoEs and the Bureaux of Finance and Economic Cooperation (BoFEC). This MoU regulates both the transfer of funds and the procurement process.

Tapping into the previous experience of P4P, the procurement procedure chosen for the HGSF pilot initiative was the one provided by P4P, i.e. 'direct contracts',<sup>13</sup> Direct contracts was P4P's most-used procurement modality to engage with FOs – especially those with little experience of selling in groups or selling to formal buyers – offering them the possibility of supplying the WFP while building up their capacity to upgrade for a more competitive process (Kelly and Swensson, 2017). Like the Direct Procurement method, the key characteristic of direct contracts is that competition is waived and quantities and prices are directly negotiated with suppliers (WFP, 2013).

<sup>12</sup> Art. 6, Proclamation no. 649/2009.

<sup>13</sup> Recognizing the need to match its procurement needs with the capacity of small suppliers, P4P adopted different contracting mechanisms alternative to WFP standard competitive tender procedures. These include: direct contracts; soft tenders; and forward contracts (For an overview of P4P contracting mechanisms, see Kelly and Swensson, 2017).



In this procurement procedure, the regional BoE makes a market assessment in order to assess the market price of the food products it wishes to purchase. These products are based on the menus and rations drawn up by the BoE in collaboration with the Bureau of Health (BoH). With the support of the Cooperative Agency, the BoE identifies the CUs that may be able to supply the selected products to the school feeding programme, based on their supply capacity and proximity to the schools. The BoE can directly approach the selected CUs and present a description of its needs and supply requirements. Once the BoE receives the CUs' proposal, it compares it with the assessed market price and negotiates the final price and conditions. Unlike most standard public procurement methods, this procedure allows a direct negotiation between the procuring entity (i.e. the BoE) and the CUs. Once the price is agreed, a contract is signed between them. Payment is made to the CUs and should be effective within 15 days of delivery (although some delays have been reported). In general, delivery is made twice a year (WFP Ethiopia report, 2018).

Initially the programme only selected one CU (per region), which was commonly the one that had already received support through P4P and had the capacity to supply the programme. Nevertheless, in both regions, with the development of the programme other cooperatives also started to be selected to participate in the procurement process and supply the programme.

As mentioned above, the alternative procurement procedure was possible because of the origin of the funds and the MoU signed by the WFP and the public institutions. Nevertheless, with the expected increasing financial contributions by the federal and regional governments to the programme, the adoption of this procurement procedure started to become an issue as it was not aligned with the standard public procurement methods established for the public purchase of goods using public funds. This is also, and particularly, the case of the Emergency HGSF programme, which is funded by the federal and regional governments and first implemented in 2015.

The field observation reports prepared by the core team of the HGSF Procurement Guideline Development Committee for the SNNP region state "Previously it was easy for the regional government to procure directly from cooperatives based on the agreed MoU as the partner's cash was from the WFP programme." However, the implementation of the Emergency HGSF programme "created a new challenge from the Ministry of Finance and Economic Cooperation (MoFEC) as the programme is financed by the government" (SNNPR Field Observation Report, 2018). Although the region initially started to follow the same procurement modality used for the HGSF initiative, in the 2017 academic year the BoE was notified that it was required to follow the standard procurement procedures (i.e. the open bidding method) for the implementation of the Emergency HGSF programme.

The same situation was also reported for the Oromia region. In the 2017 academic year, regional auditors notified the regional BoFEC that it was not complying with the public procurement regulatory framework as it was not adopting the standard public procurement methods established for the procurement of goods.

Like any type of public purchase, the procurement of food for the Emergency HGSF programme must follow the public procurement rules and the related procedures. Nevertheless, adoption of the standard public procurement methods – as in other international experiences – has imposed important challenges to the implementation of this initiative.

While the HGSF pilot initiative is still covered by the MoU, considering the expected increasing financial contribution by the federal and regional governments and the upscaling of the programme, the issue also arises for this initiative, threatening the sustainability of the

programme in the long term. Furthermore, the MoU was only signed for the initial years of the programme interventions with the aim that in the future other procurement modalities aligned with the public procurement rules would be arranged (interviews).

## 2.4. Challenges faced in the implementation of the Ethiopian HGSF initiatives linked to the public procurement rules and practices

As in other international experiences, also in Ethiopia the standard public procurement rules and practices have been imposing important challenges to the implementation of the HGSF initiatives and their aim of linking schools' demand for food to local and smallholder agricultural production (interviews, WFP Ethiopia Report, 2018; Oromia Field Observation Report, 2018).

As the programme's mid-term evaluation (interviews) reports, the standard public procurement rules represent one of the main challenges faced by the MoE in feeding school children in time in the HGSF emergency programme.

The field reports from the SNNP and Oromia regions observe that after the good experience of food procurement from CUs, the requirement to adopt the standard public procurement method for the HGSF Emergency programme has created important challenges in its implementation.

In some regions, although the funds had already been transferred for more than three month, the BoE was not yet able to start feeding the children due to issues related to the procurement process. This delay has been leading to high rates of children dropping out from school (reported as high as 50% in the SNNP region), which is of great concern to the MoE.

Among various factors, this delay can be explained by the time needed to perform all the steps in the open bidding method and meet all the requirements, which is generally long. While the request for quotation procedure takes around 10 to 15 days, the open bidding one may take at least two months (interviews). In the case of the HGSF emergency programme the length of the open bid method is also aggravated by the regional BoE's difficulties in planning the procurement activities in advance. As the MoE reports, in the case of Emergency HGSF, the process of selecting the beneficiary regions and schools already takes considerable time and the transfer of funds generally occurs not much in advance, making it difficult for the regions to plan and start the procurement process earlier.

The challenges reported relate not only to the length, but also to the complexity and high level of bureaucracy of the open bid method – for both the procuring entity and the suppliers interested – as described above. One illustrative example regards the standard bidding documents. In the case of the open bidding procedure, these documents (which must be used by both the procuring entities and the interested suppliers, and which must be purchased by the latter) have more than 100 pages. They are very complex, especially for small-scale rural suppliers. In the case of the request for quotation method – and the method adopted in the HGSF pilot initiatives – the documents to be used are only two pages long, or a little more.

The field observation report for the Oromia region also shows challenges faced by CUs in participating in the regional bidding for the supply of food to the Emergency HGSF programme. CUs are allowed to operate in specific geographical areas established in their bylaws. Recently, in the procurement of food for the Emergency HGSF programme the CUs had to participate in a bid with a coverage outside their geographical boundaries, which went against the regulation described in Box 2.

In this region, the BoE had requested permission to adopt an alternative procurement procedure for this academic year and was authorized to use the restricted bidding one (See Box 4). This method allows procuring entities to avoid the traditional public advertisement requirement and authorises them to directly contact potential suppliers and invite them to bid. Although the other steps in the procurement procedure are quite similar to the standard open bid procedure (and therefore still very complex and bureaucratic), this possibility is quite relevant. Contacting target suppliers directly allows potential challenges related to a lack of access to information to be overcome. Furthermore, a publicly advertised invitation to bid – apart from the longer time it takes – would allow any type of supplier (such as traders and importers) from any region (or foreign country) to bid. This was what happened, for instance, in the Amhara region when the open bid method was implemented (interviews). On the one hand, advertising the bid widely can enhance competition and the equal treatment of suppliers. On the other, however, at this current stage, it considerably limits the government’s possibility of pursuing the objective of linking school feeding initiatives to local and smallholder agricultural production and of achieving all the related potential benefits described above. In the case of Amhara, the prices charged by these other types of suppliers were reported to be higher than those provided by the CUs (interviews).

The need to manage trade-offs among the different objectives of public procurement (such as non-discrimination among suppliers *versus* supporting local and smallholder producers and the national economy) is recognized in many legal systems, including the Ethiopian one, as will be discussed in section 3.

**Box 2: Challenges faced in the implementation of the HGSF Emergency programme in Oromia**

Following a request for it to use the open bidding method for the procurement of food for the Emergency HGSF programme, the regional BoE requested permission to adopt an alternative procurement procedure and was authorized to use restricted bidding. This method allows the procuring entity to directly invite potential suppliers to bid instead of advertising the invitation to bid publicly. The BoE started the procurement process but it was only able to identify two CUs in the region with the capacity to supply the programme. As this procedure requires invitations to be sent to at least five potential suppliers to ensure competition, they could not continue. The regional BoE had to submit a new request to the BoFEC to obtain permission to proceed with only these potential suppliers. One month after the request, the BoE was allowed to proceed with the procurement process with the two existing CUs. Although both CUs were only interested in bidding for the supply of food to the schools in their respective geographical areas, this was not possible. They had to participate in the whole Woredas bid.

*Source:* Adapted from an Oromia field observation report

Additional challenges assessed in the field observation reports include an increase in the price paid to the CUs. This is explained, according to the report, by the timing of the procurement<sup>14</sup> and by the lack of negotiation between the parties, which had been the praxis in the previous

<sup>14</sup> As reported for the SNNP region, the delays and length of the procurement procedure increased the pressure on the CUs to aggregate and supply the food products in a very short time (SNNPR Field Observation Report, 2018). Furthermore, the start of the school year (September) when the purchases are expected to be made, is outside the harvest season and food prices are double. (WFP Ethiopia Report, 2018, SNNPR Field Observation Report, 2018).

procurement modality. According to the standard procurement rules, the contract must be awarded to the eligible supplier proposing the lowest price.

Another challenge is delays in payment. Although the regulation requires payment to be made within 18 days, a lack of uniformity in the payment-clearance documents in all the schools and “manmade problems” were mentioned in the field observation reports as the main causes of delay (Oromia Field Observation Report, 2018).

These experiences of the pilot projects in Ethiopia provide evidence of the challenges imposed by standard public procurement rules and related practices in the implementation of HGSF. They already present important challenges in the implementation of the pilot initiatives and can become important barriers against the scaling-up of these initiatives and the implementation of the forthcoming Ethiopian National School Feeding Strategy and its objectives.

As a result, to build the linkage between school feeding programmes and local and smallholder agricultural production it is necessary to align the public procurement rules and practices. This means developing a public procurement regulatory framework that not only allows but also facilitates the inclusion of smallholder farmers and their organizations in public food purchases, while taking into consideration their capacity to participate in public procurement procedures.

This need has been recognized by the government of Ethiopia, which has established under the leadership of the MoE the HGSF Procurement Guideline Development Committee and its core team with representatives of the Federal Cooperative Agency, the Federal Government Procurement Authority, the Ministry of Agriculture (MoA), the FAO and the WFP.

### 3. ALIGNING PUBLIC PROCUREMENT RULES AND PRACTICES FOR THE IMPLEMENTATION OF HGSF INITIATIVES

#### 3.1. Best practices at the international level

The need to align public procurement rules and practices for the implementation of HGSF initiatives and their aim of linking schools’ demand for food to local and/or smallholder agricultural production has been recognized in various countries. Examples include Brazil, Paraguay, Bolivia and also France and the USA (Swensson, 2018).

Recognizing: (i) the multiple benefits that HGSF has the potential to offer; and (ii) the barriers that standard public procurement rules can impose against its implementation, these countries, among others, have developed various mechanisms to align public procurement rules and practices according to the country context and programme objectives. Their experiences demonstrate not only the challenges that standard public procurement rules and practices can impose but also that alignments and adaptations are feasible.

These mechanisms are based on the idea that public procurement (such as school food procurement) can go beyond the immediate scope of simply responding to the state’s procurement needs and that it can be used as a policy instrument to meet additional social, environmental or economic objectives.

Different international frameworks support this understanding, including the 2014 UNCITRAL Model Law on public procurement, which expressly recognizes the pursuit of social, economic and environmental policy objectives through public procurement and provides a range of

mechanisms that countries can adopt to achieve them. The idea is also endorsed by the United Nations (UN) Sustainable Development Goals (SDGs), whose Target 12.7 aims to “promote public procurement practices that are sustainable [i.e. which include environmental, economic and social aspects], in accordance with national policies and priorities.”

In the African context the idea that public procurement can be used as an instrument to achieve broader social, environmental or economic goals has also been recognized in the 2017 Johannesburg resolution on public procurement. In this resolution, representatives of the African countries agreed to “take urgent strategic and tactical actions” in order to “elevate public procurement to a strategic function to enable it to contribute to realizing countries’ sustainable and socio-economic aspirations.” These include the adoption of various regulatory instruments coupled with adequate safeguard measures to curtail abuse.

There are different types of instruments that governments can adopt to adapt public procurement rules and practices to facilitate the inclusion of smallholder farmers and their organizations in public food markets and support the implementation of HGSF initiatives. They can be divided in three main groups at three different levels of intervention: (i) preferential procurement schemes; (ii) other legal tools; and (iii) administrative adjustments.

### 3.1.1. Preferential procurement schemes

Preferential procurement schemes are legal mechanisms which allow procuring entities to reserve contractual opportunities or to adapt the selection process and related rules to give a competitive advantage to target suppliers (such as smallholder farmers, micro, small and medium food producers and their organizations) or to a contractor who commits to supply from them.

These mechanisms are of key importance if the achievement of socio-economic policy objectives is to be incorporated in public procurement rules (Quinot, 2013). They create an exception to the general principle of equal treatment of suppliers and can be used to support different types of supplier (the target beneficiaries) according to government priorities. These mechanisms cannot be created through policy interventions and necessarily require a legal underpinning (UNCITRAL, 2014; WTO, n.d.).

It is important to note that the adoption of these instruments does not mean an overlap of socio-economic objectives (such as support for local and smallholder agricultural production) with the traditional objectives and principles of public procurement. They are developed on the basis of specific legal conditions and safeguards in order to manage the required trade-offs and curtail abuses (See Swensson, 2018).

Table 1 provides a description of preferential procurement schemes and examples of their adoption at the country level to favour the linkage between school feeding programmes and local and smallholder agricultural production and support the implementation of HGSF and its multiple potential benefits.

**Table 1: The use of preferential procurement schemes to facilitate the access of smallholder farmers and their organizations to school food markets.**

Instrument	Country	Description	Related programme and/or regulatory framework
<p><b>Reservation or ‘setting-aside.’</b></p> <p>Contracts, or portions thereof, can be reserved for contractors who satisfy certain prescribed criteria (e.g. classify as smallholder or family farmers).</p>	Brazil	<p>School feeding procuring entities must reserve at least 30 per cent of the federal budget allocated for the purchase of food for contracts with local smallholder food producers and their organizations (i.e. family farmers and family rural entrepreneurs).</p> <p>Competition will occur, but only among these target beneficiaries, thereby guaranteeing – or at least facilitating – their access to school food markets.</p>	Law No. 11.947: PNAE (National School Feeding Programme)
<p><b>Preferencing.</b></p> <p>Although all contractors who are qualified to undertake the contract are eligible to bid, competitive advantages can be granted to those contractors which satisfy prescribed criteria or which undertake to reach specific goals in the performance of the contract.</p>	Bolivia	<p>Procuring entities give an established price-margin preference in the procurement of goods and services to: (i) micro and small enterprises; urban and rural smallholder producer associations; and farmer cooperatives (20% price margin in the case of open tenders and the ‘national support to production and employment’ procurement procedures); and to (ii) products produced in the country.</p> <p>This preference scheme allows for school feeding procuring entities to offer a competitive advantage to a selected category of suppliers (i.e. local smallholder farmers and food producers) which, although they compete with other non-preferred suppliers, enjoy better chances of being awarded the contract.</p>	Supreme Decree 0181/2009

<p><b>Indirect.</b></p> <p>Although public institutions do not procure directly from target beneficiaries, procurement requirements can be used to promote policy objectives by obliging contractors to reach specific goals in the performance of the contract (e.g. requiring contractors to source at least a percentage of their products from target beneficiaries).</p>	Paraguay	<p>School feeding procuring entities can award contracts to caterers to buy food, prepare it, and serve it to schools, and require as a contractual condition that a percentage of the food used in preparation is to be purchased from smallholder farmers. Procuring entities are free to choose the minimum percentage (above a minimum of 10%) to which the contractor will have to commit in order to be eligible to participate in the selection process.</p> <p>The indirect scheme adopted in Paraguay's school feeding programme allows the government to build a linkage with local and smallholder agricultural production even if the procurement and food preparation activities are not performed in-house, but rather by a contracted third party.</p>	<p>Decree no. 9270/2018;</p> <p>Paraguay National School Feeding Programme</p>
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### 3.1.2. Other legal instruments

Besides preferential procurement schemes, there are other types of legal instruments that can be adopted to support the alignment of public procurement rules and practices for the implementation of HGSF programmes. Indeed, despite the importance of preferential procurement schemes, these types of instrument may not be enough to overcome all the challenges faced by smallholder farmers in accessing public food markets mentioned above. Examples include the development of adapted procurement procedures (or the possibility of adopting alternative ones), tailoring participation requirements and adapting the size of contracts to the capacity of smallholder suppliers. These instruments can be adopted either together with preferential procurement schemes or individually.

Table 2 presents some of the instruments adopted by different countries to support the access of smallholder farmers to public food procurement initiatives.

**Table 2: Other legal instruments to facilitate the access of smallholder farmers and their organizations to school and other public food markets**

<p><b>Adapted Procurement procedures</b></p>	<p>In Brazil, the reservation scheme adopted by PNAE is also accompanied by an alternative competitive procurement method (i.e. the ‘public call’ [<i>chamada pública</i>]) tailored to the needs of smallholders. Recognizing that the standard open-tender procedure – due to its often high level of complexity, formality and cost – may pose important challenges to smallholder suppliers, the law allows for the waiving of this default procedure and provides for an <i>ad hoc</i> competitive procedure adapted to suit the characteristics and capacities of family farming producers and their organizations. A similar procedure is also provided for by the Paraguay regulatory framework for the direct procurement of food from family farmers.</p> <p>In the USA and France, the regulatory framework does not provide for an <i>ad hoc</i> procedure for the procurement of food for the school feeding programme but allows the use of alternative methods already recognized by the regulatory framework. These methods – such as request for quotation or direct procurement in Ethiopia – are simpler and, although not specifically tailored to smallholder suppliers, are more easily adaptable to this type of supplier and to the school food procurement context.<sup>15</sup></p>
<p><b>Rationalizing requirements</b></p>	<p>In Brazil, participation requirements are tailored to suit the characteristics and capacities of smallholder farmers and their organizations. Instead of requiring producers to prove their legal, technical, economic and financial status and their compliance with tax and labour obligations by means of a series of documents (as required in the standard open tendering process), individual producers are only required to present their fiscal and personal documents and the PRONAF Eligibility Declaration (DAP).</p> <p>The DAP is a document which certifies that a producer complies with all the criteria established by law to be classified as a family farmer or family rural entrepreneur. This document is issued for a family unit (individual DAP) or for a formal organization (DAP legal person) and is an essential document for participating in all Brazilian programmes related to family farming, including ones for food procurement (such as the National School Feeding Programme – PNAE, and the Food Purchase Programme (PAA).</p>
<p><b>Adapting contract size</b></p>	<p>In France, the public procurement regulatory framework allows (and encourages) procuring entities – including school feeding ones – to divide single contracts into separate and smaller lots (i.e. contract</p>

<sup>15</sup> In the US case, the use of alternative procurement methods is directly supported by the Child Nutrition ‘Resource Manual,’ which aims to provide guidance to procuring entities for the pursuit of broader development goals through food procurement within the school feeding context (ICN, 2015).



	lotting) to (i) facilitate access by small and/or specialized suppliers (including small and medium enterprises and farmer organizations) to public contracts; (ii) create real competition between suppliers, regardless of their size; and (iii) support the use of quality, environmental or social awarding criteria in the selection of suppliers (MAAF, 2014). This instrument can be used even if the division of the contract into smaller lots leads to the adoption of alternative procurement procedures due to their lower value.
<b>Reducing the payment timeframe</b>	Recognizing the importance of short payment periods for access by smallholder farmers to public food markets, the regulation of the Food Purchase Programme (PAA) in Brazil imposes a reduction in the timeframe for processing payment from 30 to 10 days. In an additional attempt to improve payment delays, a specialized bank card or PAA card was introduced in 2013. This card enables smallholders to receive payments owed by PAA directly from the federal government (without passing through the municipality administration), thereby speeding up the payment process.

### 3.1.3. Administrative adjustments

Administrative adjustments are interventions at the administrative level that are aimed at adapting the practices of procuring entities to address operational issues in the procurement process that generally constitute a barrier for smallholder farmers. Examples include: measures to improve the communication of contract opportunities; aligning the terms and conditions of payment; increasing the time available to respond to calls for tenders; and adapting the size of contracts (Brooks et al. 2014; ITC 2014). These adjustments may not require a specific legal underpinning. Soft law instruments (i.e. non-binding instruments such as guidelines) can play an important role in guiding procuring authorities in adapting their procurement practices within the boundaries of the existing regulations.

Table 3 presents some administrative adjustments adopted in different country contexts to support access by local and smallholder farmers to public food procurement in their school feeding initiatives.

**Table 3: Administrative instruments to facilitate access by smallholder farmers and their organizations to school and other public food markets**

<b>Improving access to information</b>	Legislation generally requires that contract opportunities should be communicated through official instruments, such as official journals (which are difficult for smallholder farmers to access), but this may not prevent procuring entities from also advertising such opportunities through more smallholder-friendly channels. Recognizing the importance of improving access to information to facilitate access by smallholder farmers to HGSP initiatives, in Ghana
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	adapted means of communications were tested and adopted within the SNV project on Procurement Governance for Home-Grown School Feeding (PG-HGSF). These included using local radios to disseminate the tender notices and translating the call for tenders into local languages (Aboah et al, 2016).
<b>Adapting contract size</b>	Although procuring authorities in the USA are not allowed to divide contracts into smaller lots (i.e. contract lotting) to artificially push the contract value below the threshold for the standard bid method, they can still adapt contracts (both in terms of the volume and number of products required) to support access by local and smallholder farmers to HGSF initiatives. In the Fayetteville and San Diego school feeding programmes, for instance, the call for tenders is made in such a way that suppliers can bid separately for each item on the list provided. Each lot of products represents an award opportunity and producers do not need to bid for every product to be considered for the bid (USDA, 2015)

### 3.2. Instruments in place in Ethiopia

While these instruments have been used to support smallholder farmers and their organizations in school feeding contexts in various countries, in Ethiopia the same types of instruments are already in place, but only for a very similar type of target beneficiaries, i.e. small and micro enterprises, and also to support local production.

#### 3.2.1. Preferential procurement schemes

##### Preference

Following the same rationale and anchored in the international frameworks mentioned above (i.e. the UNIDROIT Model Law on Public Procurement and the UN SDGs), the Ethiopian procurement regulatory system already recognizes a preferencing scheme to facilitate access by small and micro enterprises to public markets and to favour the procurement of goods produced in Ethiopia.

Although the Federal Proclamation states that “no discrimination is tolerated on the basis of nationality, race or any other criteria not having to do with supplier qualifications” (art. 25, Proclamation No. 649/2009) this legislation recognizes that in certain circumstances an exception needs to be made in order to allow the government to use its procurement power to pursue socio-economic objectives that go beyond the immediate scope of responding to the state’s procurement needs. These include to “encourage local producers, companies and small and micro enterprises which support the national economy.”

As a result, procuring entities must give a 15% margin preference in the price evaluation process for goods produced<sup>16</sup> in Ethiopia. Furthermore, the Proclamation establishes that where in the

<sup>16</sup> For this purpose, ‘goods produced in Ethiopia’ refers to any good for which, as certified by a certified auditor, more than 35% of the value added occurs in Ethiopia (Art, 25 (4), Federal Proclamation).

evaluation of bids for the procurement of goods, services or work bidders offering similar price and quality obtain equal percentage points, preference is to be given to local goods, services or companies.

Similarly, a price preferential margin of 3% is granted whenever small and micro enterprises (established according to specific legislation) compete with local suppliers in national competitive bidding. In such cases, if a non-preferred supplier submits an offer of birr 1000 and a SME one of Birr 1020, with an increase of 3 per cent the non-preferred offer will be evaluated as if it was for Birr 1030. Therefore, the offer of the SME (of Birr 1020) becomes the one with the lowest price. This allows a competitive advantage to be given to this type of supplier within a competitive procurement process without compromising on quality and with the objective of supporting their access to public markets and the national economy.

The same type of instrument is also adopted by the states' regulations, which in some cases provide for a preferential price margin for small and micro enterprises of up to 13 percent (Bahta, 2013).

### Set-aside

Although the set-aside instrument is not expressly provided for by federal legislation in Ethiopia, it can be found in the regulatory frameworks of some regions. Using their legislative autonomy mentioned above, some regions regulate reservation, or 'set-aside,' as an additional instrument to align public procurement rules and practices to the support of small and micro enterprises and the local economy. While, according to standard public procurement rules, any qualified supplier is eligible to tender for a given contract, this mechanism creates an exception. It only allows target beneficiaries (such as small and micro enterprises) to participate in the selection process and, therefore, to be eligible for the award of the contract.

For instance, the state of Tigray has a significant number of set-aside lists involving construction work, goods and services for small and micro enterprises, reversing certain procurement opportunities only for these suppliers (Bahta 2013). In a bid to further strengthen such small and micro enterprise set-asides, a new directive was issued for this region in November 2010, namely the Directive relative to Procurement Set-asides for Small and Micro Enterprises (no. 124/2010).

### 3.2.2. Other legal instruments

Besides preferential procurement schemes, the Ethiopian regulatory framework also provides for other types of legal instruments aimed at aligning public procurement rules and practices to broad development goals.

In the case of small and micro enterprises there are several measures in place which aim to **rationalize participation requirements**. For instance, instead of requiring bid security, performance security or advance payment guarantees, small and micro enterprises can just present a letter of guarantee issued by a competent institution (Directive art. 16.20.5). Furthermore, small and micro enterprises can obtain all the bidding documents free of charge (while, as mentioned above, other types of suppliers must purchase them).

Ethiopia's regulatory framework establishes that up to 30% of the contract price can be advanced to small and micro enterprise suppliers by way of advance **payment** without asking

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for an advance payment guarantee. Instead, the public entity may adopt other type of safeguards more adapted to the capabilities of small-scale suppliers. For instance, an institutional buyer can, where appropriate, require the opening of a special bank account into which the advance payment may be deposited and from which the payment can be withdrawn only with the joint signatures of the representative of the public body and the supplier for payment of expenditure arising from performance of the contract (Directive, art. 16.26.4). Advance payments, as mentioned above, can constitute an important instrument to support small-scale suppliers to public markets due to their limited access to money, savings and credit.

### 3.2.3. Administrative adjustments

The Ethiopian regulatory framework also allows also for administrative adjustments that can significantly support access by small scale producers to public markets.

Although the public procurement regulatory framework does not have any specific rules to tailor the **advertisement** of the invitation to bid for small and micro enterprises (or other types of suppliers), it allows it. As the Directive states, without prejudice to the requirement to publish the invitation to bid in a national newspaper that has a nationwide circulation, procuring entities are allowed to also advertise it at any time, as many times, and by any means of their choice, including national radio and television. This allows procuring entities to use communication instruments that are of easier access for local and small-scale suppliers.

Similarly, regarding the reduction of **contract size**, although Ethiopia's regulatory framework forbids the division of contracts into smaller lots to artificially push the contract value below the alternative procurement method thresholds, it requires procuring entities to organize procurement in such a way as to open up opportunities for as many local producers as possible to participate in the procurement (Directive, Art. 9.3). This gives space to procurement entities to adapt their procurement practices, adapting the size of contracts to the capabilities of smallholder farmers and their organizations.

### 3.2.4. The Special Directive for food procurement for higher education institutions: creating an exception

The Ethiopian legal system also provides a specific instrument to align the public procurement rules and practices within the food procurement and education context, i.e. the special Directive for the procurement of food items by higher education institutions (i.e. universities). Although this instrument does not apply to the school feeding initiatives, it is of great relevance in this context for two main reasons. First, the Directive recognizes the need to adjust the standard public procurement rules for the procurement of food within the education sector and the possibility of issuing a special Directive to address this need. In 2005, the MoE conducted a study on the procurement of food items by higher education institutions to feed their students and identified several challenges. The findings of the study suggested that this type of procurement required a special directive. Although they only apply to higher education institutions, these recognitions may support a similar statement for the case of schools and HGSF initiatives.

Second, the Directive creates an exception to the standard public procurement rules in the education and food procurement context. In particular, recognizing the challenges imposed by the standard procurement methods for the procurement of food by higher educational institutions to feed their students, the Directive authorizes the adoption of alternative methods, such as request for quotation and direct procurement. As discussed above, normally these procurement methods can only be adopted under special circumstances or for procurements

below a specific threshold, a threshold that in the case of Ethiopia is not very high.<sup>17</sup> According to this Directive, they can also be used in the following cases:

- For processed food produced in the country (such as sugar, pasta, oils, etc.), if the product is available in more than one factory procuring entities can avoid the open bid method and procure such products by collecting quotations from at least three national suppliers. This allows the procuring entity to directly contact potential suppliers with the capacity to supply the food products, and apply a much simpler and faster procurement procedure.
- If the food products are only available from one national factory, procuring entities are authorized to procure them using the direct procurement method and to negotiate the price.
- In the case of cereals and grains, procuring entities should assess the market price of the product and are allowed to procure these products from CUs through request for quotation, selecting the proposal with the best price.

As for the preparation of the food, although universities can prepare food in-house, using their own employees, they can also contract an enterprise (i.e. caterers) to do it. In this case, they should use the standard open bidding method to contract such an enterprise and give preference to small and micro enterprises.

Although this Directive only applies to federal universities, which have different characteristics (in terms of location, number of students, etc.) and adopts a different implementation model, it represents an important precedent for HGSP initiatives. This regards both the recognition of the need to adjust the standard public procurement rules and the exceptions and instruments provided, such as the possibility of using alternative procurement procedures. Similar instruments could also be of great use in the case of HGSP initiatives to overcome the challenges documented in this report.

#### 4. RECOMMENDATIONS AND CONCLUDING REMARKS

The existing instruments adopted by the Ethiopian government reveal that: (i) standard public procurement rules and practices can represent a barrier against participation by small scale suppliers in public markets; (ii) adaptations of the public procurement rules and practices to support these types of supplier and to support the achievement of socio-economic objectives through public procurement are not only necessary but it is also possible to implement them while still respecting the principles of transparency, accountability and fiscal responsibility.

Taking into consideration:

- The characteristics of smallholder farming and trading – operating with risks and high transaction costs (Poulton et al 2006; Poole 2017) and having a similar strategic economic importance for the country to that of small and micro enterprises.
- The potential multiple benefits that can be achieved through a linkage between school feeding programmes and local and smallholder agricultural production as demonstrated both by international experiences and the Ethiopian HGSP pilot initiatives.

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<sup>17</sup> For instance, the threshold for request for quotation is currently birr 200,000.00 (around USD 7,100 based on the 09/01/2019 rate). In Senegal, instead, a similar threshold is fixed at XOF 50 million (around USD 87,000 based on the same date's rate), a much higher value.

- The three-fold return on investment that HGSP can have in Ethiopia with a cost-benefit ratio as high as 1: 7.2 (WFP, 2018),

it is important that similar instruments to those already in place for small and micro enterprises are developed to align public procurement rules and practices to support the implementation of HGSP initiatives targeting local and smallholder agricultural production.

In this regard, the role of the Agency is crucial, in terms of the mandates bestowed on it under Art.15(4), 15(5), Art.15(13) and Art.16(5) of the Proclamation, in implementing the recommendations set out below.

## Recommendations

### 1) **To recognise smallholder farmers and their organizations as eligible beneficiaries of preferential procurement schemes, similarly to what is already provided for small and micro enterprises.**

This could be achieved by amending the federal proclamation (and subsequently also the regional ones), by including, for instance, smallholder farmer cooperatives in article 25 – similar to small and medium-sized enterprises – as beneficiaries of preferences in the case of food procurement for school feeding initiatives.

In addition to the preferencing – and similarly to what is already provided for small and micro enterprises in some regions – a recognition of a set-aside instrument for smallholder farmers and their organizations for the supply of food for school feeding initiatives is also recommended. While preferencing schemes would allow smallholder farming cooperatives and cooperative unions to have an advantage while competing with other types of suppliers, a reservation (i.e. set-aside) scheme would allow certain contracts (for instance, for fresh products or grains and pulses) or portions thereof, to be reserved exclusively for this type of supplier.

### 2) **To develop a special Directive for the procurement of food for public school feeding initiatives**

Despite the importance of preferential procurement schemes, they are not enough alone to overcome the challenges imposed by standard public procurement rules and practices for the implementation of HGSP initiatives. It is therefore recommended that, in addition to the adoption of preferencing and reservation schemes, other types of instruments be developed through special Federal and Regional Directives on school food procurement. It is important to highlight that, although a Federal Directive may have limited coverage due to the legislative competencies of the regions, it would still be of great importance in settling an example for the adoption of similar instruments at the regional level.

The Special Directives for school food procurement should:

(i) regulate, similarly to the higher education institutions Directive, the use of **alternative procurement methods** for school food procurement, in particular the request for quotation and direct procurement methods. These methods are simpler and – as already revealed by the case of higher education institutions and international experiences – more appropriate for the supply of food with the objective of linking school feeding programmes to local and smallholder agricultural production. When combined with appropriate safeguards, they can be used while still ensuring respect for the principles of transparency, accountability and fiscal responsibility.

When more than one supplier is available, the request for quotation method could be an ideal option to ensure access by and foster competition among the largest number of eligible suppliers.

**(ii)** provide specific instruments aimed at overcoming the barriers against access by smallholder farmers and their organizations to school food markets. These instruments should include, in particular, ones aimed at rationalizing the participation requirements, reducing payment timeframes, facilitating advance payments, adapting contract sizes and improving access to information. The instruments already in place in Ethiopia for small and micro enterprises together with other instruments experimented in international experiences constitute good examples that could be adopted for the implementation of HGSF initiatives and regulated by the special directives.

Although not currently implemented within Ethiopia's HGSF initiatives, the special directives could also **(iii)** allow and regulate an indirect procurement scheme to support the award of contracts to caterers who purchase at least a certain percentage of food products from local smallholder producers and their organizations. This would open the door to adopting a third-party implementation modality – i.e. in which the procurement and food preparation activities are not performed in-house but rather by a contracted third party (e.g. a caterer) – if different regions would like to do this in the future according to their specific contexts.

It is important to note that a Special Directive addressing most of these points has recently been adopted in the SNNP region, as is described in Box 3.

### **Box 3: The new SNNPR Directive**

It is important to highlight here a Special Directive that has recently been issued by the SNNP region for the procurement of food and transport services for school feeding programmes. This Directive was developed with the support of the SNNPR Public Procurement Agency and BoE, and was approved after the development of the first draft of this report.

The Directive recognizes the challenges that the standard public procurement rules have been posing to the implementation of HGSF initiatives in the region. It provides a set of new rules to facilitate the implementation of the linkage between school feeding programmes and local and smallholder agricultural production, while ensuring transparency, accountability and the legality of the procurement process.

Similarly to what has been discussed in this report, the Directive authorizes and regulates the use of alternative procurement methods (i.e. direct procurement and an alternative procurement method based on a request for quotations) for the procurement of food from local farmer organizations (i.e. farmers' organizations, cooperative unions and primary cooperatives) and provides instruments to overcome additional barriers. These include, for instance, advance payment instruments and adapted participation requirements.

Although it is limited to the SNNP region, this Directive represents an important milestone towards the alignment of public procurement rules and practices to support the implementation of HGSF initiatives in Ethiopia.

Furthermore, despite the fundamental importance of legal mechanisms, it is important to emphasise that they are not enough in themselves. Although the focus of this report has been on the alignment of public procurement rules for the proper implementation of HGSF initiatives, it recognizes that the legal mechanisms proposed need to be accompanied by interventions at different levels in order to be effective. In particular, they need to be accompanied by adequate institutional capacities and procuring entities which are appropriately trained and sensitized. It is important to also develop specific guidelines and training to support procuring entities with implementation of the legal mechanisms and, therefore, to successfully implement HGSF initiatives.



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### Field observation reports

HGSF Procurement Guideline Development Core Team Committee:

- Field observation report on Home Grown School Feeding Procurement implementation. West Hararghe Zone, Oromia Region. May 2018.
- Field observation report on Home Grown School Feeding Procurement implementation. Southern Nations, Nationalities and People's Region, Regional State-Hawassa Zuria, Silte zone Worabe woredas. May 2018.

WFP Ethiopia:

- Report on Homegrown School Feeding appraisal mission in SNNPR. March 2018.

### List of people interviewed

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