
ECO-EFFICIENCY IN BIDDING PROCESSES TO PURCHASE EVERYDAY SUPPLIES FOR THE BRAZILIAN FEDERAL ADMINISTRATION

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ABSTRACT

Environmental sustainability in the Government's daily self-management should be the subject of efficient public policies, especially in the management of public assets. In this sense, and through the deductive methodology, the article focuses on the analysis of the operation and management of public administration in dealing with the purchase of everyday equipment, in order to watch out the principles of environmental law and sustainable development, in accordance with bidding laws and eco-efficiency. Thus, the article discusses the steps of public policy and the guiding principles of public administration to pursue eco-efficient acts in its purchases of everyday items. In conclusion, the article attests the failure by the Brazilian federal government to observe the stages of public policy and the bidding legal principles on this matter.

Keywords: public policy; principle of efficiency; public property; sustainability; eco-efficiency.

*ECOEFIICIENCIA NOS PROCESSOS LICITATÓRIOS PARA
AQUISIÇÃO DE UTENSÍLIOS DE USO COTIDIANO DA
ADMINISTRAÇÃO PÚBLICA FEDERAL BRASILEIRA*

RESUMO

A sustentabilidade ambiental no cotidiano da autogestão do Estado deve ser objeto de políticas públicas eficientes, especialmente no gerenciamento do patrimônio público. Nesse sentido, e por intermédio da metodologia dedutiva, o artigo tem como foco a análise do funcionamento e do gerenciamento da administração pública ao lidar com a compra de equipamentos cotidianos, de forma que atente aos princípios de Direito Ambiental e do desenvolvimento sustentável, em consonância com a Lei de Licitação e a ecoeficiência. Para tanto, o artigo aborda as etapas da política pública e os princípios norteadores da administração pública para uma atuação ecoeficiente nas suas aquisições de utensílios de uso cotidiano. Em conclusão, o artigo atesta a inobservância, pela Administração Pública Federal, das etapas da política pública e dos princípios vetores da sua atuação nesta seara.

Palavras-Chave: *políticas públicas; princípio da eficiência; patrimônio público; sustentabilidade; ecoeficiência.*

INTRODUCTION

The topic of environmental sustainability has received progressive attention from the Government, from the private sector and from the civil society in what concerns the management of public and private interests. Once the State is the entity that, par excellence, holds the presentation and the representation of popular sovereignty, the processes and proceedings related to its self-management have been subject to studies on the observance of sustainable administrative practices.

Therefore, the work problematizes environmental sustainability as a parameter for efficiency to be considered when preparing public policies for the acquisition of consumables in the routine of the public management.

The so-called “sustainable bidding process” has deserved attention from the doctrine and the jurisprudence when it regards large-amount state investment such as infrastructure projects. However, the routine of the administrative activity consumes a huge amount of supplies that, isolatedly, do not cause measurable environmental damages. However, on a large scale, those supplies represent huge environmentally harmful potential in case their management and use are not ruled by sustainable criteria, starting at acquisition. That is the case of pens, erasers, paper, light bulbs, etc.

Starting from that problem, the work aims at examining the preparation of Government self-management public policies under the perspective of efficiency in the acquisition of those supplies. Some legal and technical criteria that may be used to guide those purchases are specifically going to be addressed.

In the context of its problematization, the theoretical milestone of this work is based on the assumptions of the legal principles of efficiency and eco-efficiency when carrying out public policies for sustainable bidding processes to be occasionally used in the purchase of those supplies.

Thus, and as hypotheses to assess the problem, some legal principles and the stages of the political-administrative cycle are going to be addressed for the applied resolution of problems within public management. Public policy cycles, allied to the eco-efficiency parameter, are going to be presented as efficient hypotheses to guide sustainable bidding processes when the public management is purchasing everyday supplies. In this work, emphasis is going to be given to the Federal Government once the

legislation that applies to it is more detailed and systematized.

On that purpose, the deductive methodology was used with a concentration on the analysis of specialized literature on the subject as well as the legislation and jurisprudence regarding bidding processes and sustainability.

In general, the text is addressing the principle of efficiency, public policy preparation cycles, legal-environmental principles – especially the one of eco-efficiency – and the application of such concepts to the federal bidding process when purchasing everyday supplies for the public administration.

In the conclusion, the text is going to put the authors' point of view forth on whether the Federal Public Administration follows or not the stages regarding public policies as well as eco-efficiency and the principles that rule its performance when purchasing everyday supplies.

1 THE POLITICAL ACTIVITY OF GOVERNMENT SELF-MANAGEMENT

Politics, under a pragmatic stand point, is the set of theologically and ideologically motivated actions to mobilize interests – convergent and divergent, public and private –, under a leadership – institutionalized or not –, centered on making and implementing decisions with a potential to be made effective and with local, regional, national or international repercussion. (OLIVEIRA, 2014)

Thus, the core of the political activity is the *decision* about some issue that may have public repercussion. That is why issues such as the *reasons* and *objectives* of politics, *rationality* and political decision *techniques*, political *regimes* and *ideologies*, *institutionalization* of the political activity, mechanisms to *control* political power and the *legitimacy* of political power itself are discussed in Philosophy and in Political Theory.

However, more recently and in democratic regimes, researchers and public agents have emphasized the issue of *efficiency* when making and implementing the political decision. Most of the analyses focus on the quality of the preparation and execution of public policies in the relationships between the Government, civil society and private initiative. Thus, efficiency has become an important parameter to check public and even private interest outlining

and satisfaction that may be seen as relevant for the feasibility of services and for goods related to the improvement of living together in complex, dynamic and plural societies in the contemporary world. (OLIVEIRA, 2013)

However, the issue of *efficiency* has not yet been given due importance when public policies are prepared regarding Government internal self-management routine activities. On that purpose, government institutions and agencies have been little efficient managing government resources and self-maintenance goods, especially in what regards aspects that are seen as little relevant. Here, the principle of eco-efficiency is being ignored. It is essential nowadays in the Governments that try to follow environmental rules, especially in what concerns sustainable development, to manage those resources.

Environmental protection is currently one of the most important points for national and international discussion. Topics such as water shortage and climate changes have led to that discussion and the need to protect and recover the environment is in the agenda of political programs even in Brazil.

Governments play a fundamental role in that issue once, since the 1972 Stockholm Convention, they create agencies and legislation to control the use of the environment and to protect it in order to guarantee life in all its forms. As Holmo emphasizes (2009, s/p),

We went from the Liberal State to the Social State and, recently, we have been inserted in the context of the Socio-environmental State, or Democratic Ecological Constitutional State of Rights, due to the emergence of transindividual and universal rights that, in turn, have their most expressive example in the protection of the environment. That new context of ecological state requires a new ethical-environmental culture in the public Administration and from the entire society, as well as the coverage or new valuation of the constitutional principles, especially the principle of efficiency by the Brazilian public Administration when managing public resources.

When addressing the issue, Silva says that that Conference reflected “the discussions [that] took place between industrialized and non-industrialized countries, considering the aspects related to air pollution,

economic development and industrialization” (SILVA, 2012, p. 67)

Within this new context, eco-efficiency shall be looked after by the Public Administration. Eco-efficiency, according to Sisinnio *et al* (2011) “involves the rational use of natural resources, as well as the minimization of waste, effluent and air emission generation and disposal. That search goes through the entire good and service supply chain”.

So, it is important to look for environmental sustainability within the Government self-management routine, for the efficiency of public policies to manage public assets. That subject still receives little attention from both public agencies and from the society that should inspect compliance with environmental principles by the public administration. The proposal is to assess that subject herein through the inductive and the deductive methods. In order to carry out that assessment, we are starting with a brief description of management in the Public Administration. Later on, we are going to analyze environmental law principles applicable to the subject to finally understand how the Brazilian Federal Government is addressing eco-efficiency. To conclude, although there is legal incentive, eco-efficiency and the application of sustainable development to public bidding processes in Brazil is little effective both because the rule is not widespread and because there is no punishment for non-application.

2 EFFICIENCY AS A PARAMETER FOR THE APPLICATION OF AN ENVIRONMENTALLY SUSTAINABLE SELF-MANAGEMENT PUBLIC POLICY

Public policies are prepared by legislative and administrative government agents. In that field, it is very common that the Legislative and the Executive Powers carry out the co-legislative activity. Thus, once the determinant or authorization rule for a specific public policy is made positive, state or private administrative agents working in government functions are in charge of implementing the authorization or determinant rule according to the binding or discretionary nature of the public policy.

Therefore, the administrative function is essential for the process that creates and executes public policies. That is the reason why we have to understand the administrative function as a government political-legal

activity for the binding or discretionary implementation of previously legislated legal regimes through mobilization, control and regulation – *ex officio* – of financial resources, human resources, assets and management techniques – with or without the participation, by means of delegation, of the civil society and the private initiative – to carry out public policies focused on collective rights (primary rights), to protect and make private rights possible (secondary rights) and to self-maintain Government institutions and agents, resulting in legal-administrative acts and in the creation of legal relationships between and inside governments, civil-administrative relationships, business-administrative relationships and relationships between the Government, people and the society that benefit of its services and products.

We notice that the administrative activity is responsible for the efficient mobilization of four important elements for the preparation and implementation of the public management and Government self-management policies. They are: a) financial resources; b) human resources; c) assets; and d) management techniques.

In this text, we are going to limit our approach to the preparation and execution by the public administration of environmentally sustainable and efficient asset management public policies, specifically for the purchase and mobilization of everyday supplies.

We are going to start from the public policy issue, whose assessment is essential for the understanding of how the decision of purchasing material is made and how its interferences are important for compliance with environmental principles, especially eco-efficiency.

2.1 Public Policy: preparation and implementation cycles

Public policy is

a set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where those decisions should, in principle, be within the power of those actors to achieve (JENKINS, 1978, p. 44).

The public policy for the environmentally sustainable and efficient asset management for the purchase and mobilization of everyday supplies

by the public administration finds support both in the Constitution and in the legislation that applies to bidding processes and government hiring. As a consequence, that policy has to follow the stages of the political-administrative cycle according to the specialized literature such as Howlett (2013).

Table 01: Stages of the Political-Administrative Cycle

Applied resolution of problems	Stages of the political-administrative cycle
1. problem recognition;	1. preparing the agenda;
2. propose a solution;	2. creating the policy;
3. choose the solution;	3. make the political decision;
4. make the solution effective;	4. policy implementation;
5. monitor results.	5. policy evaluation.

Source: HOWLETT; RAMESCH; PERL, 2013, p. 15

Each one of the stages above is structured into several other stages and procedures under the perspective of different sociological, economic, political, legal, scientific and even natural variants. However, and in a simplified way, we can say that each stage is characterized by standard situations.

In the first stage, a political agenda is created around problems – controversial situations – that receive, for different reasons and once they are noticed and identified, the attention and appraisal from the agents that prepare the public policies and consequently reflecting on their action.

Kingdom (1995) describes the agenda as the list of issues or problems that receive real attention from government officials and that are checked by them or presented to them by third parties. Therefore, the focus of the political agenda is narrower than the universe of the real issues or problems that affect the society.

As a problem is introduced onto the public agenda and being aware that a position or even a decision concerning that problem has to be issued, the public policy preparation process is started based on the possibility to create and evaluate alternatives for a solution to the problem to be proposed. In that second stage, the goal is to specify political options that may be used to solve the issues and problems brought to the agenda (HOWLETT; RAMESCH; PERL, 2013).

The third stage is political decision making, that is, it regards

the deliberative dimension itself for the political jurisdiction. As a consequence, there is a set of issues to be evaluated in that stage, such as: a) competence to decide; b) decision process; c) effects of the decision. That stage is open for decision on the problem listed on the political agenda and on the possible handling options presented (HOWLETT; RAMESCH; PERL, 2013). Issues or problems presented are dealt with in that stage and the possible alternatives for a solution to be reached are chosen so that an action is implemented or not (BREWER; DeLEON, 1983)

It is in the fourth stage – implementation of the public policy – that the synergy among actors is fomented, as well as the necessary resources and processes for the course of action that aims at fulfilling the solution chosen by the political jurisdiction. This is the longest lasting stage during which *managerial efficiency* and *result optimization* have to be permanently pursued. Consequently,

After a public problem got to enter the political agenda, after several options to solve it were proposed and after the government set forth the political objectives and chose a course of action, it is still responsible for putting the decision into practice. The effort, the knowledge and the resources used to translate the political decisions are the implementation stage regarding the political cycle. While most of the political decisions identify the means to pursue their objectives, later choices have to achieve results. For a policy to work, it is necessary to allocate funds, appoint people and develop procedural rules. (HOWLETT; RAMESCH; PERL, 2013, p. 179).

As a corollary of the entire process, the fifth stage regards the evaluation of public policies not only in what regards results obtained and processes carried out, but also regarding the learning that was available. In that context, the fifth stage is very important when assessing efficiency and continuity or not of a certain political measure that was adopted, which allows for review or adjustment (HOWLETT; RAMESCH; PERL, 2013). It is possible then to understand the need to improve or not to apply the public policy assessed and, in a well structured Democratic Rule of Law, it may even allow citizens to take part in this composition and change in a more intense way.

2.2 Public policies and efficiency

As a collective repercussion decision, public policy, in all its cycles, has to be based on suitable planning on the real needs and interests of the society or of government self-management in order to try to offer optimized responses to demands and problems.

For that to happen, a public policy has to be created and implemented based on the collection and availability of reliable information on relevant issues with public synergy as it is the case of environmental sustainability.

Once reliable information (the one that encompasses the context of its field of information in a coherent and detailed way) is collected and made available, *efficiency* in public policy requires planning regarding the problem subject to the decision. Planning means having a real diagnosis of the problem to be faced and preparing a forecast so as to try to solve it in the best way possible and as fast as possible, that is, look for a solution that is potentially “optimal” in what regards preparation and execution.

Efficiency in public policy requires continuity to manage the object of the political decision, all technical and financial issue being considered for feasibility and any possible corrections. Thus, the Government has to professionalize its agents and it has to demand professionalization from private agents who carry out some project with the Government. In addition to that, fiscal responsibility of the efficient policy cannot be merely formal, under the penalty of making decisions precarious and even unfeasible. In that context, bureaucratization shall be the minimum necessary for good management so as not to compromise public or self administration interest but just to monitor and execute it efficiently. At the same time, internal and external management control activities have to be mainly educational and only complementarily punitive.

Finally, *efficiency* in public policy has to allow for the flow of ideas, self evaluations and good practices so that there is synergy among public and private agents in charge of deciding with responsibility and implementing their decisions. In a democracy, means to access information and an effective opportunity to take part in the society – in its different segments and understanding of the world – should be subject to ongoing improvement, especially

through new computer technologies.

The Government has to give attention to the dimensions of *efficient management*, in which efficiency itself, efficacy and effectiveness are included. When addressing the subject, Furtado (2007, p. 112) approaches efficiency from the stand point of economicity (relationship between costs and benefits), relating it to the efficacy of political action (evaluation of benefits generated for society) and its effectiveness (whether objectives were really achieved).

For Modesto (2015), the content of the principle of efficiency is pluridimensional and several elements are included in it besides economicity (relationship between cost and benefit). As the author understands it,

The imposition of efficient performance, from the legal point of view, is related to two connected dimensions of the administrative activity:

- a. *the dimension of rationality and optimization of the use of the means;*
- b. *the dimension of satisfactory results of the public administrative activity.*

It is not only one or the other requirement, but the two ideas jointly. Efficiency, on legal purposes, is not only the reasonable or correct use of resources and means available according to the objectives, as it is usual among economists and managers. Efficiency, for managers, is a matter of optimization of means, for the jurist, it regards optimization of means as well as the quality of final actions. Remember that the public administrator is forced to act according to the best result parameter, consulting the principle of proportionality.

Batista Júnior (2012, p. 99) in turn, says that

for the promotion of the common wellness regarding the performance of the Public Administration, both the means and the results have a lot of importance. Thus, the principle of efficiency is a biopotential principle as it turns its legal action towards the instrumental action carried out as towards the result obtained by it. The principle requires the maximum usage of existing potentialities, that is, of little resources that the society owns, as well as a quantitatively and qualitatively optimized result in what concerns meeting collective needs.

And what would *efficiency* be in public policy?
As a decision with public repercussion, the political activity

has to be based on suitable planning on the needs and real interests of society and Government self-management to try to give optimized answers to the demands of society and the administration of the government apparatus.

For that to happen, public policy has to be supported in all its stages by the collection and availability of reliable information on relevant issues with public synergy such as safety (preventive, repressive and investigative), access to education (basic, scientific and technological), access to health (disease treatment and prevention), access to infrastructure (roads, sanitation and electric power), access to labor market, access to public and private entrepreneurship, environmental sustainability, among others.

Once reliable information (the one that encompasses the context of its field of information in a coherent and detailed way) is collected and made available, efficiency in public policy requires planning regarding the problem subject to the decision and the possible solution measure. Planning means having a real diagnosis of the problem to be faced and preparing a forecast so as to try to solve it in the best way possible and as fast as possible, that is, look for a solution that is potentially “optimal” in what regards preparation as well as execution.

Thus, *efficiency* in public policy requires continuity managing the object of the political decision, considering all technical and financial issues to make it feasible. As a result, the Government has to professionalize its agents and it demands professionalization from private agents who carry out some project with the Government. In addition to that, the fiscal responsibility of the efficient public policy cannot be merely formal, under the penalty of making decisions precarious and even impossible. On that purpose, procedure bureaucratization has to be the minimum necessary for good management so as not to compromise the feasibility of public interest and just to allow for efficient control. On the other hand, internal and external control activities relating to management should be mainly educational and just complementarily punitive.

Finally, *efficiency* in public policy should allow for the flow of ideas so that there is synergy between private and public agents in charge of making political decisions and implementing their decisions. In a democracy, means to access information and

the effective opportunity to take part in society – in its different segments and understanding of the world – have to be subject to ongoing training especially through new computer technologies.

3 ENVIRONMENTAL PRINCIPLES AND THE CONSTRUCTION OF THE ECO-EFFICIENCY PRINCIPLE IN THE PUBLIC ADMINISTRATION

The role of the Government in the protection of the environment is defined since the beginning of Environmental Law. To insure compliance with that function, the Government had to develop new techniques and modernize to protect the environment, creating new ways of rendering public services, imposing cogent behavior standards for everything that concerns the preservation of the environment and developing a system of stimulation and incentive for the private initiative when it pursues the same objectives. (MOREIRA NETO, 1977). As in the Rule of Law the application of the power takes place within the limits set forth by the law, it is important to understand the need to build a legal system that corresponds to those new ways through which the Government acts, based on the environmental principles set forth by international agreements recognized by it.

Environmental Law makes its appearance in the 70's through the initial milestone of the 1972 Convention in Stockholm. As an independent science, Environmental Law has its own principles that come up with the 1972 Convention in Stockholm and are broadened by the 1992 Declaration of Rio on Environment and Development (FIORILLO, 2009). To study the insertion of eco-efficiency in the public administration and the importance of sustainable bidding processes is necessary for the evaluation of the general principles of Environmental Law that guide those processes.

The first one is the Principle of the Ecologically Balanced Environment as a Fundamental Right that has the right to the environment as the supreme value of the society, in an extension to the fundamental right to life, in the condition of a third generation or diffuse right incorporated by the Democratic Rule of Law (MILARÉ, 2009). In face of the differences between societies and regions, compliance with that principle leads to the second principle, the

one of the Equitable Access to the Environment. By means of that principle, equitable criteria are imposed, that is, all generations are guaranteed material equality.

Once it is a right of all and access being guaranteed to that environment, the Principle of the Polluter-Payer is deduced. According to it, if an agent degrades an environmental asset, compensation is necessary in order to protect the right of the society to have access to it. That principle aims at sanctioning the harmful act and at not giving the lawbreaker the right to pollute, according to Milaré (2009). It is the principle that immediately supports the internationalization of the social costs of the environmental damage by the agent that causes it, setting forth a mechanism to make the polluter responsible.

The Principle of Sustainable Development is essential to understand the current Environmental Law and its insertion in sustainable bidding processes. It appears in the 80's as a concept created by the Brundtland Report and it is internationally established by ECO/92. Sustainable development says that it is important to harmonically equalize the cycle of exploration of natural resources, essential for economic production, with their cycle of bioavailability, resulting in an increase of the social well-being and the improvement of life conditions for this and the following generations (DERANI, 2008). It creates harmony between development and the environment under a cultural and historical perspective, looking for suitable solutions for each society, and with its participation, to satisfy material, imaterial and quality of life needs without injuring ecological and cultural needs. The objective is not to hinder economic development, but to have it by means of more suitable instruments that minimize environmental costs due to degradation at the most. It cannot be confused with sustainability that is interested in the maintenance of natural resource stocks under the argument that those resources are essential for the continuity of the economic activity.

Other very important principles are considered by the environmental variable in public decisions for which impacts and damages to the environment have to be regarded so as to insure the previous principles.

Last but not least, the Principle of the Public Nature of the Environmental Protection that subsidizes the others through

the definition of an encompassing governmental role in face of the environmental issue along its entire protective system.

Then, there is the fact that environmental resources, even when they belong to private owners, are not available in their environmental qualities once the last ones cannot be separated from the common good: an ecologically balanced environment. The activities have to be ruled by the Government to protect the common good, but they also have to follow that standard. And incentive, through the example and other incentives, attitudes that lead to positive impacts and guarantee environment preservation and protection since, once it is devastated, it never goes back to its previous condition.

On that purpose, the legal nature of the environmental good assumes a modality of good connected to third generation rights according to Bobbio's (1992) definition, which differentiates it from the other kinds of resources. First, because it is separated from the classical division between private and public goods once that good is not available to anyone due to the fact that it is transindividual interest and the holders of the environmental good are not defined. Second, because the environmental good has an indivisible nature, as Milaré (2009) says, once the quality of the ecological balance cannot be individualized, it goes through the interest of all. The result is the need to reduce the use of the environment, giving incentive to more environmentally correct productions. That also proves the important role of the public administration when purchasing products that follow environmental standards and their effects on the society as a whole.

In that context, rights and their guardianship are present in the entire chain of human activities and they may be noticed from the exploration of natural resources, after due process, to the possible damages to the environment and to the society itself.

It is worth saying that environmental impact may be positive or negative depending on the effect resulting from it, direct or indirect, reversible or permanent. According to Resolution CONAMA nº 01, dated 1986:

Article 1st – On the purposes of this Resolution, environmental impact is any change to physical, chemical and biological properties of the environment caused by any form of material or energy resulting from human activities that, directly or indirectly,

affect:

I – the health, the safety and the well-being of the population;

II – the social and economic activities;

III – the biota;

IV – the aesthetical and sanitary conditions of the environment;

V – the quality of the environmental resources. (MEDAUAR, 2014, p.705).

We have to emphasize, once again, that the environmental impact is not a synonym for environmental damage. The first one may result in benefits or damages to the sphere where it takes place. The second one is necessarily the loss of the environment, understood in a broad sense, reaching all goods protected by environmental law and its instruments, exceeding the mere ecological imbalance because, as already said, it reaches an indefinite group of people. For that reason, it is not only a matter of just rejecting the damages imposed to individuals, but the damage that, with the aggression to the environment, is imposed to the entire community because it harms diffuse interests. But also look for activities that bring more positive than negative impacts on the environment.

Finally, it is good to say that, in addition to the concept of environmental impact, Resolution CONAMA n° 01, dated 1986, lists on article 2nd examples of activities that impact the environment. However, that list of activities is not conclusive due to the fact that environmental impacts are not linear and do not stop in time.

It is evident that the right to the environment, herein understood as essential to insure the right to life, is above the economic benefits that buying products for the “lowest price” are able to provide for at the short term. However, the fundamental right to an ecologically balanced environment should not be used as a mere limit to economic development under the penalty of noncompliance with the above mentioned principle of sustainable development. Efficacy of the use of instruments to protect the environment is strictly connected to the capacity of the Public Power to lead the concrete situation in order to provide the society with protection and sustainable development at a time.

It is necessary that the economic treatment for environmental issues is serious and broad otherwise the economic perspective is presented in a superficial way in disrespect to the due environmental

care, which is often seen nowadays. That distance between both is the environmental crisis once economic processes are subject to market logics that takes to degradation once negative environment externalities are not accounted for. It is necessary to remodel the market logics due to the fact that social and ecological externalities get bigger and bigger because of irrationality (or rationality in excess) of capital, which is going to generate, in addition to the current environmental crisis, the impossibility of the market itself. It is the responsibility of the Public Agencies to give incentive to an economic process that meets the standards of Sustainable Development through public policies, as it is currently defined in article 3rd of the Law for Federal Public Bidding Processes.

Environmental protection is essential both intersocially and intergenerationally. When there is damage and it is not paid for by the one who caused it, that generates an externality in the economic system, that is “costs that affect third parties without due compensation” (MOTTA, 1997, p. 3). Thus, environmental externalities such as environmental costs have to be internalized in economic activity planning. Without doing so, private appropriation of natural capital is generated and a mass of people excluded from the use of non-compensated environmental goods is created in the current and the future generations. Thus, “although the use of environmental resources fails to have a price that is recognized in the marketplace, its economic value exists as the use of it changes the level of the society’s production and consumption (well-being)” (MOTTA, 1997, p. 3). Much beyond the economic issue, there is the issue of the cultural, biological, aesthetical values of environmental goods, not all being subject to monetarization once they are not always associated to usage. Thus, when products are purchased by public agencies without following environmental standards, they also become responsible for the damages to the environment caused by the company from which they purchased the products. That is because there was no inspection regarding compliance by the companies with the necessary requirements to insure environment preservation and protection and a whole.

One must bear in mind that consumerism is a disease in our society and it has to be deeply discussed. Real impact on the environment has to be proved and informed for a reduction to be

required so that individuals cooperate with governments for the continuous and intense protection of the environment.

Thus, the Public Administration plays an important role in that. Besides punishing or simply giving incentive through its actions, it is able to impose environmental protection and to encourage sustainable development and consumption.

3.1. Eco-efficiency

Eco-efficiency, as said before, looks for the rational use of environmental resources so as to generate less impact on the environment, reducing waste and emissions as a whole, which has to be followed by the entire supplier chain. It is very important that this principle is applied to comply with an environmental ethical responsibility according to article 225 of the Federal Constitution and to the Stockholm (1972) and Rio (1992) Declarations, both of them subscribed by Brazil. To meet that principle, it is essential to look for less consumption and longer usage, searching for companies, the supply services and material that meet sustainable development and sustainability development standards.

In the light of the current crisis in Brazil where the individual rules over the collective, the application of eco-efficiency would allow the public professional to develop efficient public management that is able to meet collective interests once it would take waste and inefficiency down and it would also decrease squandering of people's common usage goods. Besides positively influencing companies that enter the bidding processes so that they become environmentally correct and influence competitors to really apply environmental standards, being concerned not only with economic development but also with environmental protection and the Brazilian social development according to the standards of sustainability.

That standard follows criteria in article 37 of the Constitution, but it mainly tries to understand that the Constitution is a whole that interrelates with itself and the articles have to be read globally and applied jointly according to the Dworkian (DWORKIN, 1999) perspective that the law should be applied as a unique block of standards.

Compartmentalization of law also makes it more difficult

to apply environmental laws once environmental law is not directly linked to any legal area but it passes through all of them, including Administrative Law.

When article 37 of the Constitution is applied, it should be understood together with article 170, item VI, and article 225 to form a whole in which the Federal Government, when carrying out purchase bidding processes, should evaluate not only administrative standards, but also environmental law and human rights standards. According to Valente (2011, p. 7) “one shall consider, due to the obligation to defend and preserve the environment, the choice of products, services and goods that meet environmental sustainability criteria without setting forth restrictions that compromise equal treatment in competitive processes”.

Eco-efficiency, according to Holmo (2009, s/p) “stimulates lower consumption, increase to production, and it also proposes the possibility of new uses for the same products inserted into the process, besides stimulating competitiveness among companies.” Public companies would be examples to be followed and they would comply with the standard of common interest to protect the environment that is established in the Federal Constitution.

Gains applying Eco-efficiency are not only economic and environmental, but they are also social. Together with the awareness of workers on the risks to the sustainability of future generations caused by the negative impact of their actions on the environment, there is a change of view that results in a different posture that is disseminated beyond the work environment (SISINNO, RIZZO, SANTOS, 2011, p.25).

Eco-efficiency appears for the first time in the domestic context through the A3p “which is an integrated vision of the public administration where the reduction to environmental degradation is reached through the reduction to waste, to the impact on the environment and the optimization of processes with a focus on prevention.” (HOLMO, s/p) and it currently finds legal support in article 3 of Law n. 8666 dated 1993 and on Decree n. 7746, dated 2012. That issue is going to be discussed in the following topic.

4 THE FEDERAL PUBLIC ADMINISTRATION AND THE INCLUSION OF ECO-EFFICIENCY IN BIDDING PROCESSES IN BRAZIL

Agenda 21 already specified the principle of consideration of the environmental variable in the public decisions. Purchasing products is essential to maintain the agencies in operation and choosing a supplier in accordance to legal criteria is an important public decision that results in high costs at the medium term in case the environmental issue is disregarded. One has to bear in mind that the public Administration is a huge buyer and that its activities or requirements may condition the producer market in a negative or positive way regarding the use of the environment.

The Ministry of Environment proposed in 1999 the Environmental Agenda in the Public Administration (A3P). It aimed at stimulating the federal government to include environmental criteria into bidding processes.

Although it has no impositive nature, it brought to light the idea of environmental management in the federal public power, and it also stimulates more environmentally correct practices in all the administrative fields and processes. In order to understand the impact it had on the environmental issue, it is important to remember that, according to Valente (2011), the impact of government purchases on the GDP is stimulated at 15%. That is a very relevant figure and, if the public administration acts or requires environmental management applied together with sustainable production for the companies that would take part in the public process, it may have a huge positive impact on the protection of the environment and increasing positive externalities.

In the search for this effect, the Ministry of Planning, Budget and Management creates Normative Instruction n. 1, dated January 19, 2010, which proposed environmental sustainability for the direct, autarchical Federal Public Administration to purchase goods, hire services or works as a way to establish a regulatory milestone to adopt environmentally correct and sustainable criteria to be used in public bidding processes and the imposition of sustainable public purchases. But also to stimulate competition among industries as a result of the environmental performance of their products in all

stages and, at the same time, gaining lower prices and higher offer. Thus, the normative makes the standard of eco-efficiency effective. The standard should also be used as a reference for public federal investment, purchases and hiring.

The guide for sustainable purchases for the federal public administration (2011) divides into three main kinds the products consumed by the Public Federal Administration.

Initially, there are raw materials, the so-called expedient material, such as paper, cleaning products, technical and information technology equipment, furniture. In general, they are durable assets and consumable goods.

The second kind of products is services such as maintenance, cleaning, technical support for equipment, etc.

And finally there are the works such as, for example, civil engineering works, roads, public buildings, bridges, etc.

In this work, our attention is focused on the purchase of raw material, especially the the ones with higher consumption and more common, but that are seen less often, although they are necessary in the entire company. Pencils, pens, erasers, staplers, paper are seen as small everyday use objects as if they would not interfere sharply in the public budget or in the damages to the environment, as it happens to large size works and services.

Those small objects, at the medium and long term, have significant impacts and, once they are part of the daily routine, end up by becoming invisible and, for that reason, ignored when thinking of the bidding process for sustainable purchases. Production methods and their efficiency, production according to environmental requirements and whether the factories play their development role before the Brazilian society are facts that are not considered to compose the environmental issue, meet sustainable development and the standard of eco-efficiency.

That perspective was considered when the presidency of the Republic proposed Temporary Measure n. 495, dated 2010 and that changed article 3 in Law n. 8666, dated 1993 so as to insert national development as a standard. Congress did not vacillate and, envisaging the perspective of applying the Constitution in its unicity, it added the term “sustainable” when it changed Temporary Measure n. 495 into Law n. 12349, dated 2010.

Thus, Congress innovated interpretation when it changed Law n. 8666/93 to say that public bidding processes have to be sustainable:

Art. 3 The bidding process aims at insuring compliance with the constitutional principle of isonomy, the selection of the most advantageous proposal for the administration and the promotion of **sustainable national development**, and it is processed and judged strictly according to the basic principles of legality, impersonality, morality, equality, publicity, administrative probity, abidance by the bid invitation, objective judgement and correlated ones. (BRAZIL,1993).

That guaranteed the obligation of bidding processes that consider the principle of sustainable development and not only sustainability within federal public bidding processes.

The administration not only moralizes public purchases, but it also takes over its function to protect the environment and it encompasses that new social reality by turning its eyes to sustainability and environmental awareness. That is, besides following the “LIMPE”, defined by Meirelles, Kamimura and Oliveira (2012, p.3) as “Legality, Impersonality, Morality, Publicity and Efficiency, principles that are forecasted in all actions performed by the public administration [...]”, it starts to follow criteria to reduce negative environmental externalities and environmental damages, adopting sustainable criteria for purchases.

Decree n. 7746, dated 2012, sets forth the guidelines for sustainable bidding processes as well as the sustainability parameters to be followed. It implemented Law n. 8666, dated 1993 and changed by Law n. 12349, dated 2010.

Decree n. 7746 dated 2012, implemented what had already been established in article 3 of the Bidding Law. Article 2 of the Decree defines that

The direct, autarchical and fundational public administration and dependent government companies can purchase goods and hire services and works considering sustainability criteria and practices objectively defined on the invitation letter, according to provisions in this Decree (BRAZIL, 2012).

Article 4 defined guidelines that clearly implement the principle of sustainable development in the Public Administration's bidding processes. Requirements have to be clear and presented on the bid invitation so that there is no difference or restriction that harms constitutional or administrative law principles. It is possible to demand that goods are made of recycled, non-toxic or biodegradable material, among other sustainability criteria.

The Decree that tries to make the standard effective creates in article 9 the Interministerial Commission for Sustainability in the Public Administration – CISAP,

of a consultive nature and a permanent characteristic, linked to the Secretariat of Logistics and Information Technology, with the objective of proposing the implementation of criteria, practices and actions of sustainable logistics within the direct, autarchical and fundational federal public administration and dependent government companies.

Art. 10. CISAP is formed by:

I – two representatives of the Ministry of Planning, Budget and Management:

a) one representative of the Secretariat of Logistics and Information Technology, who shall preside over it; and

b) one representative of the Secretariat of Federal Budget;

II – one representative of the Ministry of Environment, who shall hold the vice presidency;

III – one representative of the Civil House of the Presidency of the Republic;

IV – one representative of the Ministry of Mines and Energy;

V – one representative of the Ministry of Development, Industry and Foreign Trade;

VI – one representative of the Ministry of Science, Technology and Innovation;

VII – one representative of the Ministry of Treasury; and

VIII – one representative of the General Controlership. (BRAZIL, 2012)

That Commission is in charge of organizing the application process from the perspective of sustainable development through the entire direct, autarchical and fundational public federal administration and dependent companies, which are going to prepare and implement Sustainable Logistics Management Plans.

The law innovates in regards to the bidding procedure, but it still needs improvement concerning the low pace of complete

implementation. However, it is an important step in the protection of the environment by Brazilian agencies.

CONCLUSION

Considering environmental sustainability as an efficiency parameter in the preparation of public policies for the acquisition of consumable goods in the routine of the public administration it is essential for the implementation of Government responsibility regarding the realization of Environmental Law principles and that also becomes effective through *efficiency* making and implementing the political decision. That, as explained above, is an important parameter to check outlining and the satisfaction of public and even private interests that may be seen as relevant to the feasibility of services and the offer of goods related to the improvement of public behavior in complex societies. Although it has not yet reached due importance in the preparation of public policies regarding usual self-management activities connected to government agencies. That happens because institutions and government agencies are little efficient managing the resources and goods for government maintenance, especially aspects that are apparently small or not important.

Environmental protection is currently one of the most important points for national and international discussion since the 1972 Convention in Stocholm that brought responsibilities of the Government towards the environment. With the Rio/92 Convention and the insertion of the Sustainable Development Principles and the assessment of the environmental variable in the public decisions to make eco-efficiency effective, looking for environmental sustainability in the routine of Federal self-management and the efficiency of public policies to manage public assets.

As stated above and although there is legal incentive, eco-efficiency and the application of sustainable development to public bidding processes in Brazil have not progressed due to the fact that the standard is not known or because there is no penalty for not using it. The environmentally sustainable and efficient asset management public policy for the acquisition and mobilization of everyday movables by the public administration finds support both on the Constitution and on the legislation applicable to bidding processes and public hiring.

For that to take place, in addition to the law, public policies should be prepared and implemented based on the collection and

availability of reliable information on issues that may be relevant and have public synergy, as it is the case of environmental sustainability.

Thus, the Government has to professionalize its agents and it has to demand professionalization from private agents who carry out some project with the Government. In that context, bureaucratization shall be the minimum necessary for good management so as not to compromise public or self administration interest but just to monitor and execute it efficiently.

Finally, efficiency in public policy has to allow for the flow of ideas, self evaluations and good practices so that there is synergy among public and private agents in charge of deciding with responsibility and implementing their decisions. For that reason, it is important to apply the principle of consideration of the environmental variable in public decisions. It seems as essential that impacts and damages to the environment are considered in each decision made by public agencies so that the principles explained above are guaranteed.

Eco-efficiency, as said before, looks for the rational use of environmental resources so as to generate less impact on the environment, reducing waste and emissions as a whole, which has to be followed by the entire supplier chain. In the light of the current crisis in Brazil where the individual rules over the collective, the application of eco-efficiency would allow the public professional to develop efficient public management that is able to meet collective interests once it would take waste and inefficiency down and it would also decrease squandering of the people's common usage goods.

Thus, the normative makes the standard of eco-efficiency effective. The standard should also be used as a reference for public federal investment, purchases and hiring. The administration not only moralizes public purchases, but it also takes over its function to protect the environment and encompass that new social reality by turning its eyes to sustainability and environmental awareness. The law innovates in regards to the bidding procedure, but it still needs improvement concerning the low pace of complete implementation. It is a huge step towards protection of the environment by Brazilian state agencies according to Agenda 21.

Changes to article 3 of the Bidding Law and Decree n. 7746, dated 2012 that try to implement in Brazil the sustainable bidding

process represent important institutional legal progress towards compliance with global Agenda 21 and environmental provisions, placing Brazil as a country that tries to effectively implement sustainable development. However, not making those standards decisively effective keeps the public bidding process as a process that fails to play the role of the Brazilian state as a manager that outstands in the environmental field and it generates distortions such as:

a) the lack of strategies to improve public purchase processes, making them more flexible and reducing the excessive formalities that decrease the pace of the purchase process;

b) managers make the public affairs an extension of their homes. It is necessary to change postures as a whole and the society has to inspect compliance with environmental provisions in the public administration. On that purpose, the culture on the subject has to change through environmental education and the development of environmental awareness;

c) The difficulty to participate in all kinds of companies, always giving priority to compliance with sustainable development provisions;

d) Purchase of products for the lowest price at the short term without assessing the product lifecycle and only considering the final price. The lifecycle being applied to accountancy, the most suitable product under the environmental point of view is assessed to find out whether it is cheaper at the long term.

Despite that upsetting context, Decree n. 7746, dated 2012, carries the optimism that a new culture of environmental ethics starts to set foot in the Brazilian Public Administration, even if the pace is slow. That is the beginning of a process that can change mentality and economic-business reality, establishing a new and effective protection for the environment.

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