Report:

Literature Review on Public Procurement: Theories, evidence and implications for regional Australia

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Chapter 1: Introduction and methodology

Public procurement is an intriguing ‘field’, given its apparent and deceiving blandness as a topic, its undeniably huge importance for governments, for industry and for entire economies (only relatively recently acknowledged), and because it has attracted in the last few decades sudden interest and enthusiasm for its ‘promises’ to furthering public policy, yet unmatched by much research scrutiny. As a field of enquiry or policy it appears to never have been properly framed, neither claimed by any particular academic discipline nor been the subject of intense academic debates. Increasingly assorted sources have come to claim some parts of the policy territory surrounding public procurement to attempt placing government procurement ‘on the agenda’, but without offering clear ways to integrate that variety of views on the topic; which has resulted in much more advocacy commentary about its potential than in-depth research about its efficacy.

As the scope of the topic is itself somewhat arbitrary and contestable and our literature review aims to address questions of value for the Regional Australia Institute (RAI) stakeholders, we propose to initiate this literature review by providing a list of stylized facts that appear generally acquiesced in most of the research and commentary surrounding public procurement. A large majority of research sources comment on aspects listed below, so we can put them at the forefront of the review, to help us devise a strategy to select topics of interest and gather materials to be included in the review. It is generally agreed in the references initially consulted that:

- Public procurement as a government business area is quantitatively substantial, and therefore assumed to offer significant opportunities (if properly shaped, controlled or regulated) to generate consequential economic impacts in terms of monetary flows and circulation (typical economic impacts), in allowing to favour targeted businesses and/or specific types of participants in the economy, and by extending the overall supply chains for government goods and services markets;

- The scope (and sometimes meaning) of public procurement varies and can create definitional and measurement ambiguities problematic for reporting and for analytical purposes across national contexts, across research agendas, across government levels (from local to national) and is often highly sector-specific as when government procurement rules, implementation and practices differ across industries or government agencies which determine its reach (for instance government procurement for the Defence sector often follows distinct rules and processes). Indeed, in some contexts, public procurement policies can refer predominantly to large discrete expenditures while in other contexts it extends to include all routines purchases, sometimes reaching into government services sectors such as education, health, policing, other administrative services, etc.;

- The substance of much research about public procurement is based on a limited array of information sources: policy documents (intent and descriptions), procedures (linked to implementation) and occasionally evidence surrounding implementation and outcomes. A large proportion of advocacy work focuses on policy statements made of relatively rudimentary declarations of intentions. Academic research attempts to examine the substantive connections linking those intentions with the procedures devised to influence the supply of goods and services supplied to government clients, their effectiveness in supporting government services delivery;
and other indirect impacts real or imagined. In contrast to many other policy fields, those connections (both theoretical and empirical) in the context of procurement activity are extremely loosely formulated;

- In contrast to the conviction surrounding the claims made about government procurement’s potential, and the passion displayed by those advocating its greater use to pursue various policy agendas, the field is under-developed conceptually and practically. Even more worrying is the fact that it has been exceptionally overlooked by the research community with respect to the provision of evidence of effectiveness, including very broad questions such as whether public procurement can be shown to be a more effectual policy tool for specific government levels (i.e. national, regional, local), is more likely to be effective for particular industries or government spending categories, and whether it is genuinely helping governments to achieve specific socio-economic objectives. Due to the increasingly acknowledged link between government procurement processes, their implementation and the potential for fraud or corruption (across the private and public divide), it is possible to speculate that potentially valuable historical evidence uncovered by government agencies over time has been concealed and is likely to remain buried in the memories of those involved. In any case, the very limited efforts to undertake self-appraisals or more systematic forms of critical assessments and the resulting inadequate transparency contrast strikingly with the new wave of claims regarding the promises of government procurement advocated by governments themselves (discussed in chapters 4 to 7). The disparity between the importance of the topic and the little that can be found internationally in terms of assessments or evaluations having produced credible and independent evidence (at least available in the public domain) is conceded by most authors.

The project scope negotiated with RAI and workshopped at their regional policy forum with invited stakeholders focused on local/regional content procurement strategies, whilst recognising that the context of other policy agendas and economic forces are currently reshaping procurement objectives, and that much of the valuable literature applies to broader national and international scales.

Our own preliminary scan of the sources of information and research pertaining to that specific scale and domain confirmed that little evidence about either effectiveness or local/regional returns exists (at the sub-national or regional levels), and that the key aspects or considerations allowing us to make judgments or provide advice on public procurement are inter-locking. For instance, it is not possible to assess the value (including risks and costs), design and practical implementation of ‘local content’ agendas without a conceptual understanding of analogous concepts and agendas applicable to the national level, as well as evidence about connections linking efficient government administration, the value and means to maintain trade openness and agreements, and their interactions with other competing agendas, such as social and green procurement. The partial evidence provided by certain fields such as economics usually targets national policies and is rarely directly applicable to the local or regional levels, or seldom sufficient to infer the impacts of public procurement regimes implemented at the regional scale. Our scan revealed that some literature of interest sometimes usefully questioned aspects of the public procurement field in discrete ways, and examined specific attempts as they arose, but was rarely in a position to provide materials, lessons learned and convincing evidence that would offer a basis for toolkits or guidance for regional jurisdictions insufficiently equipped to develop their own procurement strategies. To address
the interests of RAI’s stakeholders, a relatively elaborate review strategy was deemed needed as a background undertaking to sequentially investigate domains of interest spanning across jurisdictional levels.

1. **Guiding principles for the review**

From a purely academic viewpoint, the relative vagueness surrounding the subject matter of ‘public procurement’ as a policy domain is itself symptomatic of the prospects of encountering scale and scope disagreements. It also means that as a research topic it could be approached in a number of ways. The following preliminary observations shaped our own ‘review strategy’, which was aiming at being somewhat critical and in no way comprehensive:

1. The subject matter itself is ill-defined, its scope and boundaries differing considerably according to points of view and of academic disciplines. The nature of the specific questions considered or relevant to jurisdictions of varying magnitudes depends on the distinct issues they face and the broader policy considerations they deal with – which is not easily generalizable.

2. There appears to be a consequential divide between academic works (attempting to connect with theories and evidence related to public administration, economic management, social impacts, etc.) and the voluminous, descriptive and quite disparate grey literatures (depicting existing frameworks or advocating for new ones with limited interest or concern with analytical consistency or completeness). In fact, these two domains are poorly connected to each other and follow different agendas, and they don’t appear to have much influence on each other, having never really gelled into a comprehensive research agenda or a policy-driven application domain.

3. The nature and relevance of the broad topic of public procurement to various aspects of social and economic life is to this day unclear. On the one hand, almost each of the hundreds of papers perused for this review mentions that public procurement is quantitatively significant (as an aggregate domain or set of activities; with various statistics usually provided to that effect) while also contending that the topic has been under-researched, is difficult to measure and remains poorly understood. A large number of authors typically argue that this situation is unfortunate either because if better managed, ‘it’ would unlock even more economic benefits or because a range of potential opportunities to ‘address problems’ could be handled through suitable institutional linkages – although those ‘benefits’ remain unproven. Public procurement undoubtedly deserves greater attention or policy interest from regions and localities, although this in itself has never clearly been established in the research surrounding government procurement, and despite the recent abundance of advocacy positions claiming that public procurement ‘should be used’.

4. Much of the preliminary literature assembled from simple term searches (across main publication databases and other conventional research sources) appeared at a glance to be dividable between a number of key topics. Indeed, such topical sub-components (described further below) provide the most practical way to organize the review. Fragmented academic communities (across different disciplines) appear to have been interested in and tackled different aspects of public procurement or policy topics. It
also appears that this differentiation has recently been increasing rather than diminishing, as new and different public procurement agendas are being promoted across locations and contexts, attracting the interest of distinct scholarly communities and without much consideration of what has been already investigated around that domain. Those notional topics vary considerably from each other, in terms of their breadth, depth, technical complexity – and presented distinctive opportunities for researchers keen on theorising or on gathering empirical evidence to inform policy. The topics themselves feature unequal research potential across academic disciplines, and their applicability differs across policy scales ranging from international, national, state, regional and local levels. Some topics appear likely to constitute the ‘core’ of both research and policy considerations as they have received some attention for decades. But new and increasingly alluring topics for both policymakers and advocates that were considered peripheral not so long ago are also attracting the attention of researchers, and their treatment and analysis remains somewhat disconnected from those topics forming the core.

Hence at the time of embarking on this literature review it was unclear what the natural and practical boundaries of the topic of public procurement should be, and whether an optimal and structured way to approach the coverage of the research literature would necessarily provide the best value for the effort. Early negotiations with RAI established that the trade-off between possible scope and depth of the review could only be settled progressively, and that the judgment of the reviewers would by necessity guide this exploration. Ultimately, the choice of topics to focus on, of theories to be appraised and of sources of evidence to inspect had to be determined by:

- their expected relevance to generic procurement policy theories;
- their applicability to regional Australia (if and whenever implementation knowledge and credible evidence could be found);
- their apparent universality potential (necessary given the scarcity of regional Australia studies), for which the potential to replicate as well as the generalizability and credibility of any empirical evidence becomes the most important value criterion;
- their likelihood to influence upcoming or future public procurement developments meaningful to RAI (given that topics such as local content, trade liberalisation and protectionism have recently reappeared in public discussions).

2. **Scope selection and methodological limitations**

A preliminary overview of the academic literature uncovered assorted literature blocks reflecting divergent questions raised by contemporary public procurement research that themselves reveal justifiable policy interrogations. Applying the analytical lenses suggested in the previous section (overall usefulness/relevance, theoretical depth and consistency or technical clarity, existence of credible evidence or findings regarding policy impacts) proved expedient to assess the relative value of those various research topics, despite the fact we do not
claim that it reflects the relative influence of various literatures, nor reveals the relative significance of concerns affecting policymakers and government agencies in charge of implementing public procurement.

As asserted above, repeated comprehensive searches established early that [a] the formal-academic research sources and [b] the ‘grey literature’ (largely web-based and produced by government, NGOs and other advocacy groups) were significantly different from each other; in terms of content, purpose, and analytical rigour. We came to the view that they should be dealt with differently in this review. Given the parallel consultative process adopted by RAI to interact with state agency stakeholders, it was decided that the reviewers would not seek documents or information from Australian jurisdictions that could not be readily found in the public domain.

Hence, we treat the two notional bodies of literature differently. The academic research literature is central to this review and is approached ‘by topic’ (across countries and government levels); to reflect the fragmented issues, disciplinary leanings and types of arguments found that have relevance for policy developments, and presumably for Australian regions. Both explicit analytical details (and indirectly rigour) and use of production or utilisation of sound evidence constituted the most important selection criteria for that domain.

In contrast, the considerably more descriptive grey literature largely extracted from the web is best organized along geo-political lines, that is by States, territories or regions. It mainly features particular contexts and jurisdictional aspirations, where linkages between references to government intentions, policy tools, expected outcomes and implications for local or regional levels are not always explicitly stated, or sufficiently developed to qualify as ‘theories of change’. We recognise that much grey literature and other such descriptive materials pertaining to North America and Europe were not scrutinised in this review for practical reasons, unless they appear particularly applicable to regional Australia. In contrast, we extracted content produced by Australian jurisdictions and NGOs in an effort to understand the approaches and priorities that Australian states and territories most commonly have considered, advocated or implemented (including also Commonwealth and larger sub-regions within States when available). What appears in the public domain remains very fragmented and can even include policies long defunct. We do not claim that what has been uncovered adequately reveals political intentions, implementation intents or policy directions. Hence, we produced an appendix overviewing directions taken or supported by Australian jurisdictions regarding the administration of public procurement as stated in the web-based public domain (as of June 2018), provided to RAI as appendix 1, noting that this landscape has been changing rapidly.

Returning to the academic component of our work which makes up this document, a preliminary list of ‘topics’ related to public or government procurement that appear to dominate the work of published research found in academia, policy think tanks and significant organizations examining the impacts of trade policy regimes is presented below. Relevant research spans across disciplines and publication outlets, although it must be reiterated that no organization or authors appear to have claimed authoritative leadership across the public procurement research nexus. The list of topics below was originally put together to reflect, organize and consolidate the array of themes that were found in the initial inspection of the literature that comprised thousands of unsystematically organized references and sources:

- Aboriginal procurement
- The role of consortia in public procurement
• Efficiency/mainstream considerations around public procurement
• E-procurement
• Evaluation, evidence and public procurement
• Green procurement
• Innovation procurement
• Less Developed Countries (LDCs) and public procurement
• Legal aspects of public procurement (international, EU and others)
• Political economy, policy and public procurement
• Public-Private partnerships (PPPs) and public procurement
• Private procurement principles and public sector management
• Administrative processes and organizational structure of public procurement
• Regional/local growth objectives and public procurement
• Small and Medium Enterprises (SMEs) support through public procurement
• Trade agreements, economic growth and public procurement
• Training, workforce and capabilities for public procurement

From an early appraisal of the apparent evolution of ideas in this field focused on the main research efforts that have produced credible evidence informing policy questions of interest to Australian states and regional agencies, the following topics were initially identified as universal and inescapable to understand contemporary directions surrounding public procurement. They were selected to be incorporated in the backbone of the overall literature review:

• Efficiency/mainstream public administration considerations around public procurement
• Trade agreements, economic growth and public procurement
• Regional/local growth objectives, local favouring and public procurement
• Small and Medium Enterprises (SMEs) support through public procurement
• Addressing socio-economic disadvantage and inequality through public procurement

A chapter on each of these topics is indeed found in the review, noting that the content and shape of each of those chapters differ, which reflects the type of work which has been done in each. As will become obvious in the remainder of the report, while there is occasional analytical overlap between some of those topics (and in some cases an alignment of similar issues approached differently), very limited efforts have gone towards integrating those topics. This is of course partly attributable to the cumulative complexity of the issues themselves, the particular importance of settings (geographical scale, industry composition, human development attributes, and legal/political contexts) and might also be explained by the methodological disparities that must be considered, in particular when discussing the divide between the role of government and individual agency. That diversity of views regarding the legitimacy of procurement as a tool to address diverse government objectives becomes apparent when shifting across chapters. The ordering of the topics considered does not necessarily reflect their importance, nor the historical development of ideas which have played a role in shaping the way government procurement is understood and administered nowadays. It has been selected to reflect scope development, initially focused on economic wellbeing and good governance, but eventually reaching into domains far removed from those more traditional concerns.
A number of outstanding topics not covered in any detail in this review which have generated increasing publications are worth mentioning briefly. They fall into one of three categories:

1) Some topics that have attracted a fair amount of attention from specialized researchers are not addressed with the depth they might otherwise deserve in their own policy context, or according to the specific agendas they pursue. Specific themes are mainly set aside from this review because although they supplement theoretical and policy challenges covered here, they are best pondered in the specialized literatures developed to address those specific agendas featuring new applications and dedicated technical tools (i.e. green procurement and supply chains have become recently popular and concentrated in a small number of publications focused on environmental matters). To that extent, their policy implications constitute extensions to the selected core topics, usually presenting supplementary research and policy challenges of considerable value and interest to specialists, but of lesser importance for the current review (i.e. the role of procurement consortia, e-procurement processes, green procurement, procurement in less developed contexts or by aid agencies, legal procurement considerations, the treatment of public-private partnerships, etc.).

2) A few other key topics emerge as issues applicable to the entire field of enquiry (i.e. policy evaluation, evidence base, workforce training, skills and capabilities, public administration) and they could all deserve special treatment on both methodological and policy grounds but are probably best discussed across the entire range of applications. In general, key messages point at widespread research and policy implementation gaps that might play a key role in advancing this entire research and policy field. Yet they generally apply to much public policy and might not be easily tackled as specific public procurement ‘issues’, because they are symptomatic of broader government, bureaucratic or social process failures. These are recognised to play an important subsidiary role and are mentioned in many of the separate chapters, as well as be reconsidered in the conclusion of the literature review.

3) Lastly, due to specific interests identified some Australian jurisdictions supported by RAI and CDU researchers, a case study-based overview of past and more recent documented attempts to address Aboriginal disadvantage through the use of public procurement in two different contexts is overviewed. In theory these attempt to connect some core objectives of contemporary public procurement approaches and design (addressing socio-economic disadvantages, boosting remote-regional economies and supporting local small enterprises). But the emerging evidence about Aboriginal procurement raises important questions about the ability of government procurement, as a process linking public and market institutions, to deal with high socio-economic complexity.

The selection of sources included in this critical review followed predictable principles, although a fair amount of snowballing occurred when promising references were discovered. For each of the core chapters included in the review, a broadly similar set of methodological considerations guided the selection of sources, their overall content and the elements considered within the critical analysis and discussions.

- Each chapter includes a small number of general statements about the field and sometimes relevant terminology are provided in each chapter, yet the focus is generally not on establishing which contributions or academic sources could be deemed to have paved the way for each of the topics (as
found in literature reviews applying to well-established academic fields of inquiry), and is rather concerned with the clarity and credibility of the claims made in each context. The most useful references or citations are selected for their policy implications and practical usefulness in contributing to arguments related to the pros and cons of using public procurement for the sake of advancing social or economic objectives. Particular attention is given to examining distinctive interpretations, intellectual disagreements and valuable critical analysis when they highlight the challenges faced by policy-makers, or help instituting testable hypotheses regarding the benefits and limitations of various approaches.

- For each core topic, we initially attempted to identify whether any recent authoritative and/or comprehensive academic reviews pre-existed that would undertake a mapping of the sub-themes. None could be found that span the conventional realms of economic growth and trade policies while simultaneously covering the recent expansion of public procurement research across the new social and environmental domains, most probably due to the methodological complexity and scope such an endeavour would entail. It must be noted that the largest proportion of the literature consulted (even within strictly academic publication channels) is relatively descriptive. Many sources report on choices made by specific political entities, describe the difficulties that were encountered and the apparent achievements or failures of probed policy directions. They incorporate more often than not qualitative data extracted from informants (usually themselves involved in procurement implementation) featuring not entirely objective views in that capacity. A large number of academic publications reflect opinions about the potential of public procurement and advocate improvements to address emerging problems surrounding existing systems or perceived opportunities. A large number of such publications were overviewed by the authors of this review, assessed and not necessarily incorporated in the current report, unless they make an original point.

- Our strategy to review this fragmented topic was not to strive to establish which opinions dominated or appeared most popular. This would be conceivable only if public procurement constituted a finite, or at least relatively coherent, array of aligned viewpoints. Instead we identify research contributions in some cases reflecting conventional views and frameworks, and in others present emerging contributions (to theory, to policy logic, to process implementation difficulties), including any credible evidence we could come across, within the realm of each chapter domain.

- In the few instances where some domain-specific authoritative reviews could be identified, they were used for their ability to provide extremely valuable shortcuts and pathways to understanding the logic of public procurement policy in ways applicable to the specific contexts in which they were constructed. Some of the most useful and generalizable elements were extracted for and utilised extensively within the review. As is customary in academic reviews, their content is reported in the respective sections, often critically assessed and their respective authors are clearly and repeatedly cited. It stems from the earlier contributions that much conventional thinking about how to assess public procurement has historically been framed by economic theory and normative policy thinking (in particular the logic of trade liberalisation and economic growth covered in chapters 2 and 3). While the disciplinary backgrounds of
researchers may have influenced the way public procurement issues and policies were contemplated, there was not systematic attempt to frame theories in the light of specific methods or ideological leanings.

- As was alluded above, considerations surrounding the geo-political scale dimension are omnipresent throughout this review, not only because of RAI’s regional audience and agenda, but also because the value of theories and arguments, sources of evidence and critiques of policy implementation are conjectured to be in most cases highly scale-specific. For instance, much of the discussion related to trade pertains to the international scale almost by definition, and yet the empirical work conducted (on the national scale) has considerable value in guiding new theoretical thinking about the effect of regulating procurement at the regional and local scales, as well as legal and political ramifications of encouraging local content policies that are to this day poorly understood. Also, specific mega-regions such as the EU have dealt with the challenges of integrating formerly distinct trade and procurement agendas, which has provided valuable lessons for application to other scales and contexts. The effectiveness of alternative organizational structures to administer public procurement (in particular the pros and cons of [de-]centralizing procurement functions and systems within a government or a set of agencies) has also attracted considerable attention in some places, and the plausibility of differing viewpoints regarding effective procurement depends on the scale considered, as much as it varies across institutional and political contexts. Wherever possible, our review highlights the logical limitations of extending theories and findings about public procurement across scales.

The review of each sub-topic also ultimately entails much critical judgment about credibility of theories, realism of anticipated processes, likely generalizability of findings as well as their overall quality. Whether more attention in given chapters was directed to theoretical foundations (explicitness, integrity, consistency) or to evidence (clarity of program logic when relevant, methodological coherence, quality of data sources and methods, etc.) depended mainly on the research sources accessed and the ways various domains and arguments were constructed to address specific questions. The review’s mandate includes commenting on the seeming reliability of various arguments, explaining why clashes might occur and identifying ways forward.
Chapter 2: The efficiency and accountability perspectives on public procurement

1. Context

This chapter reviews several contributions broadly concerned with the effectiveness of procurement by government agencies, often framed by economists and political scientists in terms of efficiency and applying to a variety of selection and delivery functions within the bureaucracy tasked with maximizing the value of government services for the communities they serve. A significant proportion of academic researchers interested in public procurement have outlined issues, principles and directions very much following that line of enquiry, which could be referred to as the ‘conventional approach’. Whilst orthodox in a positive sense, that perspective is by no means simplistic as it deals with complex public management issues and considerable risks to the public purse. In all, the approach has provided a relatively cohesive framework to guide policymakers and public administrators involved in designing public procurement systems for the sake of producing cost-effective service delivery while minimising risks of socially costly and often hidden waste, inefficient administration or fraud (referred below as primary functions). Supplementary (non-primary) objectives appear as components associated with newer socio-economic agendas (discussed in chapters 4 to 7) which somewhat deviate from this orthodox framework. Even within the conventional approach, tensions between goals, costs and types of risks arise which are by no means straightforward to identify and control, even for capable and well-resourced bureaucracies.

As we undertake this review connecting sometimes markedly heterogeneous approaches, it makes sense to consider initially the most basic and grounded perspective adopted on the role of procurement, to contextualize it (as national and local jurisdictions feature diverging viewpoints and capabilities), present it as a straightforward scenario, and to progressively add elements increasing complexity in the rest of the review. In this chapter, we envision the conventional context of a developed and mixed economy with abundant market institutions and reasonably well-functioning political processes, where governments are elected on the basis of their declared intentions (so the objectives of using procurement in a way or another are clearly and transparently stated) and their constituencies have subsequently a reasonably good grasp of what to expect. Governments therefore are pictured as communicating quite clearly their broad agenda including various spending commitments (primary function), their overall policy directions and any reasons to intervene in the economy (including possibly supplementary objectives), which will guide bureaucratic actions and policies during any mandate. Goods and services are required not only to run the government’s administrative function itself, but also to undertake the multiple actions that have been committed to for their primary functions. From a conventional economics perspective, these functions can be conceptualized as attempts to address orthodox market failures, such as supplying public goods, providing merit goods, developing infrastructure projects, correcting externalities, regulating natural monopoly production, etc. (Weimer & Vining, 1989). What matters here from a procurement perspective is that those activities have been publicly declared and budgeted, are endorsed through an adequately transparent political process and are assumed to arise out of efforts to pursue public interest (Bovis 2005).

In such a straightforward and simplistic representation of public affairs, the procurement function exists to ensure that those legitimate and well-comprehended commitments are fulfilled and that the pledged goods and services
are acquired as promised, while imposing a minimal burden on taxpayers. In functional terms, public procurement is tasked with establishing a bridge between:

1. the objectives of a community, large or small, formulated and actioned by government institutions articulating the array of goods and services that must be obtained to fulfill those objectives (with attributes such as quantity, quality, delivery, timing, and recipients), and

2. the private industry suppliers themselves engaged in market transactions with a variety of clients (private and public or as coalitions known as public-private partnerships [PPPs]).

Adopting economic concepts and terminology, the procurement function’s main task becomes one of efficiently administrating that process. This can apply to the choice of the private supplier providing the greatest value to the public and to the smoothness of the process which involves bureaucratic costs, and supply-delivery costs if red tape translates into higher service delivery charges paid by the community receiving the services. Because of that interface with the private sector and community-consumers, the design of the process employed to select one or many supplier(s) is of particular interest because it must address both efficiency (for the public) and equity (for the suppliers) objectives. In practical terms, procurement entails a series of typical steps ranging from needs formulation, advertisement, regulated communications, production of documentation, acceptance of bids, shortlisting of suitable suppliers, selection mechanism, negotiations, awarding of contracts with possible legal and other backup processes, etc. even just in the initial setup phase. Then monitoring, evaluation, compliance mechanisms and quality audit systems need to be put in place during and post contract award. This perspective might appear relatively uncomplicated (even mechanistic on the surface) for a narrow, pre-determined domain, but would be quite extensive if intended to apply to a wide range of interacting government functions. Furthermore, it is critical to not ignore the significant tensions between cost-minimizing challenges, risk management and good governance priorities that arise. Also, many models and approaches have been proposed (and adopted in different times and locations) to design and administrate procurement systems, even when considering only the conventional “formulation-design-selection/choice-enactment-verification-compliance” spectrum. The economic efficiency framework explored in this chapter contrasts the effectiveness of those models (Thai, 2001).

2. **What has research emphasized?**

A large amount of research on public procurement tries to explain:

a) Why different models or approaches have emerged or evolved in various contexts (policy, politico-legal, industry, project type and socio-economic), and;

b) Whether it is possible to contrast the relative efficiency of alternatives public procurement systems or approaches to ensure public value is maximized.

The second element will be considered in the sections below. Much of the descriptive research literature clarifies the former point and documents the connection between the growing importance of government activity, and the
nature of its accompanying commercial activities. While this is ultimately of lesser interest to the current review than issues of effectiveness, it cannot be completely overlooked. It appears sensible that procurement processes were initially designed to be practical, burden-less and risk-minimizing (the evident possibility of corruption will be discussed in greater details below) rather than conceived as policy engines aiming to achieve strategic objectives. In that sense, public procurement existed a long time prior to the development of notions and principles of good governance and effective policy. Some researchers refer to the subordinate status of public procurement to elucidate why it has been so neglected as an area of academic study, even though governmental entities and public procurement practitioners have diligently worked to improve public procurement practices across times and societies. In his pioneering work, Thai (2001) also recognises that public procurement as an ‘activity’ has a long history by referring to historical examples from Syria (with orders by governments on red clay tablets for jars, grain, and other commodities between 2400 and 2800 B.C.), China and Greece aiming both at supporting government services and developing trade. Interestingly, early examples from the United States show that government procurement at the municipal level predates that of state and federal governments as ‘printing’ was one of a few services contracted out by government in the settlements and colonies. But it also shows that ‘profiting’ from those services was from the beginning possible and embedded corruption an early concern, when it is reported that

‘there were no professional procurement officials; goods and services needed by government were supplied by commissioners or commissaries, who received a commission on what they bought for the militia or other administrative units. It was not until the late 1800s that state legislatures began to create boards or bureaus responsible for purchasing, but central purchasing was hardly a practice at that time’ (Thai, 2001).

Nowadays, procurement activities are pervasive and it is more fitting to think of the evolution of a public procurement system embodying many functions and involving different players, featuring changing structures and handling particularly sizable volumes of trade originating from across national, regional and local governments. There have been debates among both academic and policy commentators regarding the trend to centralize purchasing that occurred in the United States. Arguments supporting centralization emphasizing scale economies and effectiveness have been opposed by others claiming that system improvements can only occur when it they are capable of ‘providing more responsive support to end users, eliminating bureaucratic obstacles to program accomplishment, improving inter-departmental coordination, and empowering service delivery managers to procure what they need without impediment by a centralized organization’ (Thai, 2001).

In reality, questions about the best ways to organize public procurement can be examined only if clearly stated goals define procurement systems, and these are applicable to specific contexts. Thai (2001) also differentiates between primary and secondary functions using a different terminology when he contends that:

‘Due to its different economic, social and political environment, each country and even each governmental entity within a country has a different procurement goal or policy. In a government entity, be it a national, state or local entity, where corruption is widespread, its procurement system may focus more on procurement integrity or transparency. In a governmental entity that has underprivileged ethnic groups, its procurement policies may focus on procurement equity. A government entity that deals with an ailing economy, may use its procurements as a tool for economic development or stabilization. In developed as
well as developing countries, disregarding their economic, social, and political environment, a sound procurement system seems to have two groups of goals: procurement goals and non-procurement goals' (Thai, 2001).

Among the research consulted and selected for this chapter, the main and often inter-connected procurement goals reported include quality, timeliness, cost (more than just the price), minimizing business-financial-technical risks, maximizing competition, and maintaining system and government integrity. Non-procurement goals (discussed in subsequent chapters) can include economic development goals (favouring domestic or local firms or local jobs), environment/green procurement (for instance when promoting the use of recyclable goods), social goals (when assisting minority and woman-owned business concerns), and international trade relations goals. All of these goals might matter to a community at some point in time, can overlap and, most importantly, don’t necessarily need to (and in many cases should not) be dealt with through public procurement processes, as other policy instruments usually exist. The case needs to be made that public procurement is a superior channel for those objectives (or secondary functions). Even when a government explicitly desires to use public procurement to address any combination of those goals, it is very difficult for policy makers and public procurement professionals to make optimum decisions as there are always fundamental trade-offs between them (Thai, 2001).

Thai (2001) also proposes several representations of public procurement systems that are deemed useful for implementation. The key point he makes though is to refute the traditional perception of the public procurement function as a clerical task of government. He asserts that the contemporary public procurement function must be handled by a professional workforce equipped with needed skills and knowledge through training and education, lamenting that higher education institutions and educators have not recognized those educational needs of public procurement professionals – although changes have been observed in that domain since his writing. The more ambitious the number of objectives and functions a government desires to associate public procurement with, the more capable and costlier the procurement workforce and systems required.

3. **The drivers of efficiency and accountability in public procurement systems**

Although some research has undertaken direct comparisons, our review does not select or propose a specific procurement system as an archetype. We simply note that if the public procurement system resembles an assembly of interrelated elements, its performance depends on the quality of all its inter-dependent elements (selection, monitoring capabilities, legal support, compliance, extent of evaluation competencies, etc.) and on their overall fit, which in system terminology can be thought of as the ‘chemistry’ between them. While system failures can at any one time be blamed on malfunctions of a specific element, it is challenging to stipulate a priori what makes a good system as they components play important roles. Because researchers must examine the functioning of only one element or issue at the time (it is rarely possible to control key elements in socio-economic systems), and their impact on efficiency, findings are highly specific and modest; and rarely conclusive. It is not unusual to see for instance, sequential recommendations that a procurement system should be centralized, then decentralized, then centralized, and so on to address specific issues with this or that component. Rather than...
describing such system, we below extract from the literature generic findings that appear valuable to inform future policy.

a) Procurement choice methods

A basic and common presumption around public procurement is that the public interest is well served by relatively unrestricted competition. In other words, it is desirable for governments to develop procedures emulating market competition whenever possible. Most public procurement involves pre-designing contracts for goods, services or entire projects with specified attributes (sometimes with itemized components or value) to be procured using an advertised, competitive procedure that is open, fair and transparent, ensuring equality of opportunity and of treatment for all candidates and tenderers (OECD, 2011). In most contexts fairly standardized ‘open’ or ‘restricted’ procedures are adopted, and there are only limited circumstances where a procedure without advertised competition is considered allowable. In the OECD terminology, some more elaborate and restrictive procedures involving competitive dialogue or negotiated process with prior publication of a contract are rarely used. The following types of selection procedures are considered acceptable in specific circumstances, as described in representative OECD directives.

Typically, an open procedure is

a single-stage process whereby a contracting authority advertises the contract opportunity and then issues full tender documents, including the specification and contract, to all economic operators that request to participate. Economic operators submit both selection (qualification) information and tenders at the same time in response to the contracting authority’s advertised requirements. The contracting authority may receive a large number of tenders; it cannot control the number of tenders that it receives, but not all of those tenders will necessarily be considered. Only tenders from suitably qualified economic operators that have submitted the required documents and that meet the selection criteria are considered. Tenders can be evaluated on the basis of either the lowest price or the most economically advantageous tender. No negotiations are permitted with economic operators, although contracting authorities may clarify aspects of the tender with tenderers (OECD, 2011).

In contrast, the restricted procedure is

a two-stage process. The contracting authority advertises the contract opportunity and economic operators submit requests to participate and then provide selection stage (pre-qualification) information, which is used by the contracting authority to establish whether the economic operators are qualified to perform the contract and to select the economic operators that are to be invited to tender. The contracting authority is permitted to limit the number of economic operators that it invites to tender and to draw up a shortlist of economic operators. This means that not all of the economic operators that qualify have to be invited to tender. The contracting authority issues the full invitation to tender documents, including the specification and contract, to the economic operators that it has selected or shortlisted. This means that, unlike the open procedure, the restricted procedure allows the contracting authority to limit the number of tenders that it receives. Tenders can be evaluated on the basis of either the lowest price or the most economically
advantageous tender. No negotiations are permitted with economic operators, although contracting authorities may clarify aspects of the tender with tenderers (OECD, 2011).

The competitive dialogue procedure is similarly

a two-stage process where the contracting authority advertises the contract opportunity, and after submitting requests to participate the economic operators first submit pre-qualification and selection stage information, which is used by the contracting authority to establish whether the economic operators are qualified to perform the contract and to select the economic operators that are to be invited to tender. The contracting authority is permitted to limit the number of economic operators that it invites to tender and to draw up a shortlist of economic operators. The contracting authority issues the invitation to participate only to the economic operators that it has shortlisted, and it then enters into a competitive dialogue phase with those economic operators. During the competitive dialogue phase, all aspects of the project can be discussed with the economic operators and the number of solutions can be reduced as part of the process. Once the contracting authority is satisfied that it will receive proposals that will meet its requirements, it declares the competitive dialogue phase closed and invites tenders. Under this procedure, tenders can only be evaluated on the basis of the most economically advantageous tender (OECD, 2011).

Such more elaborate and complex procedures are preferred for the delivery of complex packages or the design of innovative solutions that require a fair amount of negotiation, some amount of secrecy (for instance in the military) where the capabilities of the agency to determine what is in the public interest are themselves potentially limited.

Lastly, the negotiated procedure with prior publication of a notice is

a two-stage process where the contracting authority advertises the contract opportunity, and the economic operators first submit pre-qualification and selection stage information, which is used by the contracting authority to establish whether the economic operators are qualified to perform the contract and to select the economic operators that are to be invited to tender. The contracting authority is permitted to limit the number of economic operators that it invites to tender and to draw up a shortlist of economic operators. The contracting authority issues the invitation to negotiate only to the economic operators that it has shortlisted. It receives initial proposals and then enters into negotiation with the shortlisted tenderers in respect of those proposals. Tenders can be evaluated on the basis of either lowest price or most economically advantageous tender.

All the procedures above aim at maintaining sufficient competition (a reasonable pool of applicants) yet to not waste the time of both the administration in charge of deciding and to cull inept applicants as early as possible to limit transaction costs to all. The four procedures extract information from applicants differently, their usefulness depending on the complexity of the services procured and confidentiality that, and likelihood that appraising applicants requires reiterated interactions with them.

In determining which procedure is preferable in a given context, economists would typically recommend considering a range of conditions that might favour one procedure over the others. The following considerations would affect the choice of procedure:
• The need to identify which bid can deliver the best multi-attribute product per unit of cost where quantity, quality, timeliness, fitness for purpose constitute likely attribute or components of delivery (Thai, 2001);

• The cost of running the procedure and subsequent elements (design, provision of information, administration, negotiation if any, compliance and likelihood of costly enforcement activities);

• The imposition of transaction costs on private businesses attempting to bid for the supply of those goods or services (whether they eventually succeed or not) – some procedures limit competition but also save time and effort for potential tenderers eliminated early;

• The need to minimise risks of corruption or objectionable behaviour, either involving agency and/or private sector conspiracies, or collusion between tenderers to exchange information to favour a competitor, share the market over multiple bids, including the observed behaviour of tactically apportioning repeated tenders. This topic is considered below, but it must be noted here that maintaining a community-endorsed level playing field is a vital concern for all types of public procurement systems and perceptions themselves matter.

• The avoidance of distortions in other markets where private firms operate, or factors of production are procured or traded. Although economists have shown that market openness is not always necessarily optimal (when multiple barriers to trade already exist), they also found that systematically attempting to intervene in markets is efficient.

It should be clear from the list above that some of the standard procedures are more efficient with respect to some of these criteria, but not with respect to others. Finding the best compromise is difficult and possibly arbitrary. When concerned about one issue, government agencies typically reform an aspect to address one problem (say ensuring a greater pool of applicants because of perceptions that entry is unfairly limited) and discover that other difficulties are created, such as the multiplication of red tape. While it is generally agreed that the two main reasons for using transparent tender procedures are to provide public accountability and to obtain the best value for money (see Holmes, 1995), other significant problems down the line might occur once a procedure has been chosen. Like in the case of auctions (that economists have researched considerably), there are a number of mechanisms that can be used to try to elicit best value for the buyer (here the government on behalf of the tax-paying public), the eventual advantage of any such mechanism depending on the information held by those participating in the auction game, and the costs of ‘running the game’ (Martin 2002; Callendar & Matthews, 2000; Heijboer & Telgen, 2002).

A good example of why eliciting the lowest price for instance is not necessarily optimal occurs in both auction theory and public procurement management. A phenomenon that has been identified in the context of auction theory and which is relevant to authorities managing the public procurement process is the "winner's curse". It occurs when the winning bid has been made by a bidder that has estimated the costs of the contract inaccurately (and possibly in some instances on purpose). From his point of view the bid turns out to be too low, leaving it with a non-profitable contract. This provides an incentive or excuse for bad performance and therefore this situation has to be avoided by the buyer (Martin, 2002), as it could result in legal procedures, negotiations creating information and transactions costs for all parties, a large share of which potentially could be falling on ‘the public’.
This phenomenon is yet another reason for having a tender procedure (and particularly selections rules and specifications) with high transparency where disparities in price can be easily explained.

Other researchers have examined the question of which service attribute or performance standards should constitute the basis for contracting. For instance, some considered whether the main criterion for selecting a contractor should be ‘output’ (based on a given price and contract length), or cost savings (for a given output or service) or an array of performance standards (quality, quantity, timeliness) or again some more sophisticated measurable outcomes (Martin, 2002; Shetterly, 2002). Some of that type of analysis is quite technical and disappointingly often inconclusive, as effectiveness depends on a wide assortment of contextual attributes (nature of the good or service, industry/sector, country legal environment, government level, industrial concentration, resident competitiveness, technological change, other objectives, etc.) and choice ought to be established on the basis of evidence regarding effectiveness rather than apparent logic.

b) Whether to consider tenderers’ past performance

Beyond the task of selecting tenderers, the question of whether ‘chosen suppliers’ can be trusted to dependably deliver the goods or services expected is of interest, as agencies in general will have limited enforcement resources and will prefer to avoid legal procedures. Directly related to the question of which criterion to use to select the preferred tender, schemes have been proposed to include information about suppliers’ past performance, and possibly registers. For instance, this has been utilised in US federal procurement policies requiring evaluations of offerors’ past performance as a way to reduce risk in selecting sources of supply. Snider and Walkner (2001) note that using past performance has grown in importance in American source selections, however, the number of past performance-related contract award protests (by displeased tenderers) also increased as a result, indicating that firms are uncomfortable with the discretion exercised by procurement officials in this area, as well as suggesting they do not trust their objectivity, information and competence. Yet it is indisputable that past performance information about a contractor’s actions under previously awarded contracts is relevant information for the sake of promoting public interest and could influence future selection decisions. Snider and Walkner (2001) state that Federal Acquisition Regulation support the inclusion, for example, of contractors’ record of conforming to contract requirements and to standards of good workmanship; of forecasting and controlling costs; of adherence to contract schedules, including the administrative aspects of performance; of reasonable and cooperative behaviour and commitment to customer satisfaction; and generally, the contractor’s business-like concern for the interest of the customer.

It is also stated that past performance differs from experience, in that experience reflects whether contractors have performed similar work before, while past performance reflects how well contractors have done the work (U.S. Department of Defence, 1999, p7). It also differs from the notion of contractor responsibility, which relates to the capability to perform work (Snider & Walkner, 2001). When lowest price is not the driving factor in procurement, officials must make ‘best value’ determinations based on trade-offs between cost, technical merit, and past performance to ensure the best value to the government. Whether these are entirely transparent, subject to errors, involve subjective assessments by officials and contain relatively arbitrary procedures is what many
tenders believe they have grounds to dispute. The increasing numbers of protests arises usually when there is an increasing number of criteria for evaluation in source selection, which intensifies the complexity of the process.

Furthermore, purposeful research experiments that contributed to the American experience suggest that indeed government evaluators might have had excessive latitude in making those past performance evaluations and connected decisions, resulting in widely differing weighting and selection of evaluation factors across and among federal agencies (Clipsham, 1998). Business perceptions that they might not be treated fairly, and that a given public procurement system does not constitute a level playing field (when determinations are obscure and mistakes are likely in the collection and evaluation of past performance) can result at first in multiple protests, then lead to the need to create new institutions to assess those protests and can eventually cause system breakdown or call for reforms, all extremely costly outcomes. It is interesting to consider the fact that private enterprises also need to factor reputation and reliability of their suppliers, but that they do not in general need to justify their calculations and decisions, as long as their businesses profit. In that sense reputation norms can constitute valuable inputs into the decision process but are made difficult and costly because public procurement requires higher levels of transparency and public trust, and not strictly designed to allow formalized and negotiated decisions processes to also anticipate undesirable strategic behaviour by both private firms and public authorities. Snider and Walkner (2001, p. 102) suggest that ‘when past performance is weighted heavily as a source selection factor, companies may increase the level of risk that they are willing to accept in today’s competitive business environment by adjusting their pricing strategies in order to win the contract [and/or]... and [subsequently] they might file protests whenever it appears that reasonableness and consistency are lacking in the source selection process’.

These authors eventually provide practical advice about the incorporation of past performance indicators to avoid these issues (Snider and Walkner 2001).

c) Whether/how much to decentralise the public procurement function

In both the American and EU contexts, it has been suggested that governments have produced directives and orders regarding responsibilities and best practices surrounding public procurement that have often had limited influence within their own agencies (Pegnato, 2003). Many researchers have reported the lack of compliance with the rules established by central authorities by departments, agencies, districts in charge of implementing and administrating contracts (or higher accounting offices in the US). It is not unusual to find that those with procurement responsibilities, themselves fail to comply with regulations and procedures and improperly document the decisions processes they were deemed to follow (US General Accounting Office, 2001).

Sometimes this is attributed to the limited capabilities of procurement staff in purchasing departments or agencies, particularly in in local and regional governments, and their inability to adjust flexibly to emerging challenges (Gianakis & Wang, 2000; McCue & Gianakis, 2001; McCue & Pitzer, 2000), but this is in no case limited to that scale. That state of affairs has in some cases led to the request by some policy advocates and reformers to relax the rigid rules and regulations that prescribe purchasing processes to be implemented by satellite agencies in favour of general principles that would serve as guides to action locally interpreted. However, it should be clear from the previous section that this would likely result in weakening the control function of purchasing and threatening accountability, service effectiveness, cost creep and risks of fraudulent behaviour. It has been
recognised that insufficient research has examined the capabilities needed by procurement professionals, for instance whether they should be knowledgeable about the essential purposes and procurement process, or be experts in a particular commodity, goods or services and industry areas (Muller, 1994).

The question of whether the procurement function is best administered centrally (perhaps rigidly but somewhat reliably and transparently) or should be flexibly decentralized is particularly relevant for large jurisdictions with inter-dependent needs and comprehensive administrations. Pegnato (2003) claims that a typical procurement system behaves like an oscillating pendulum as ‘it swings from one extreme of unresponsiveness to mission needs to the other extreme of hypersensitivity to mission’. But he observes that the successive procurement reforms creating those swings play a significant role in reducing red tape (i.e. when replacing paper purchase orders with credit card orders, and eventually e-procurements was implemented), increasing the speed of contracts being awarded or in decreasing the number of bid protests. Yet for the right balance to be found in a specific jurisdiction, all those aspects must be considered in their entirety, rather than attempting to fix one occurrence. For instance, many electronic commerce initiatives in the US that triggered widespread procurement reforms were subsequently considered to not have worked well when taking into account the total costs of running the system, including the adjustments that had to be made by businesses providing the services (Pegnato 2003). Hence, it is not clear that new contracting techniques are actually saving money without a broad mapping of system costs, and whether they create new inefficiencies (for instance that efforts made to reduce bid protests reduce the legitimate protest rights of certain, often smaller, contractors).

d) Transparency, accountability and corruption

These three topics often set aside by policymakers have attracted much attention in key parts of the academic literature, sometimes serving as guiding principles for system design, other times in attempts to promote public procurement reforms with strong moral and philosophical undertones. Entire papers focus entirely on the critical role of transparency (Georgieva, 2017a), on the significance of accountability and integrity (Fox & Morris, 2015; OECD, 2009) and on the persisting problem of corruption (Coppier & Piga, 2007; Georgieva, 2017b; Mubangizi & Sewpersadh, 2017). Many researchers suggest that those aspects should be at the centre of any public procurement analysis, claiming that...

public procurement frameworks in developed and developing countries alike are recognised as being characterised by an unstable tension between the public expectations of transparency and accountability, and of efficiency and effectiveness of resource management. This conformance - performance tension, manifest throughout a complex procurement environment, is further destabilised by conflicting stakeholder interests at the political, business, community and management levels and exacerbated by competing claims between executives, lawyers, technologists and politicians for lead roles in this arena. The application of new technology in this discipline offers a qualified potential to substantially resolve these tensions. However, the application of technology is itself at risk from a lack of understanding about the nature of its impact and the wider political dimensions of professionalism in public procurement (Schapper, Malta, & Gilbert, 2006).
They usefully add:

The concepts of transparency and accountability are nowhere more significant in public administration than in procurement, which may account for more than a third of all of a government’s outlays. Yet while these attributes are paramount as in regard to good governance, they do not on their own distinguish procurement from many other activities of public process. However, there are many other elements that combine to make public procurement especially enigmatic, one of the least understood and most vulnerable areas of public administration. [...] Public procurement is inherently a politically sensitive activity, not least because it involves significant amounts of public money even within the context of a national economy. [...] Compounding the issues implied by its overtly political and business dimensions are widespread misunderstandings and even gross ignorance within the executive structures of governments as to what procurement actually entails [...] Failure of awareness and expertise at this level commonly represents a real risk to good governance, even creating the anomaly whereby public procurement may sometimes be characterised as transparent while not accountable [and ...] public procurement is subject not only to divergent political, managerial and regulatory objectives, but also to key performance measures associated with these divergent objectives introduce conflicts between and even within government agencies themselves (Schapper et al., 2006)

Schaper et al. (2006) interestingly warn against trendy management models being applied to procurement (because the latter is too important and complex a function on one hand) and condemns the belief that an analytical framework for public procurement could be understood by ‘digesting a procurement training manual, independent of its political context’. By its very magnitude, public procurement demands high quality public governance in terms of transparency and accountability as well as effective management that can deliver optimum risk management and value-for-money outcomes (National Performance Review [NPR], 1993). In developing their own framework for public procurement, Schapper et al. (2006) suggest the following elemental objectives:

- **Public confidence** – underpinned by attributes of accountability, transparency, equity and fair dealing in relation to procurement processes;
- **Efficiency and effectiveness** – in the use of public monies to achieve value for money and efficiency of delivery of procurement outcomes;
- **Policy compliance and consistency** – of both the processes and outcomes of procurement in relation to other policy objectives and expectations of the public sector such as environmental issues, training and apprenticeships, international obligations and especially business and regional employment impacts.

These objectives are unsurprising and are consistent with generic public management as well as in accordance with community standards yet operationalizing them is very challenging and often dismissed as secondary by agencies and public authorities. While they seem simple, research has shown that translating them into operational reality capable of efficiently tackling issues and policies that are frequently in conflict if not mutually incompatible. Transparency and accountability feature as building blocks for the first objective listed above, cost-effectiveness is central to the second, and ambiguity surrounds the third: How can such overwhelming complexity surrounding objectives be deemed to be consistent with accountability and cost-effectiveness.
Schapper et al. (2006) propose that several approaches are generally employed to deliver those objectives, although they are in practice often combined. The most commonly used is ‘regulation and compliance’ in jurisdictions where the dominant political concern has been the principles of transparency, equity and fair dealing (public confidence). Management of public procurement through an extensive regulatory framework is the traditional means of control of administrative process and implementation of policy. It is designed to minimize discretion in circumstances considered to present a high risk of being affected by undue influence, including perceived unreliability. Such a highly prescriptive approach appears particularly appropriate in jurisdictions where officials have minimal procurement skills, and which are striving to ensure transparency or prevent or overcome corruption; which is why the regulated approach is almost universal in, but not exclusive to, developing countries.

The penalty for a highly prescribed framework is its lack of flexibility in managing agency needs, placing it immediately in tension with performance and efficiency. Schapper et al. (2006) argue:

> The detailed codification of process is designed to eliminate scope for partiality in outcomes and protect governments from scandal and corruption (often with limited success), but in doing so also tends to eliminate all but the most mechanical aspects of this activity (Kelman, 1990; Pegnato, 2003). Regulated frameworks are procedurally costly and, while readily prescribed for simple procurement, are slow to adapt to changes that require the re-engineering of process, or the development of increasingly complex procurement associated with sophisticated supply chains. Micro-regulation of the process also has the unintended consequence of eroding the skill requirements of procurement officials, thereby undermining professionalism in this activity. Procurement training in this context consists of learning the rules. This lack of professionalism can, in turn, be expected to increase the need for further regulation of process as well as reduce value-for-money in procurement which requires extensive management skills. This erodes accountability except in terms of compliance. (Schapper et al., 2006)

Other researchers also note that the daunting volume of regulations acts to obfuscate transparency by making the processes difficult for stakeholders such as businesses to comprehend, and the public to maintain confidence (MacManus, 1991).

Despite Schapper et al. (2006) warning against trendy management models and in reaction to the heavy-handedness of regulation in the American context, successive waves of management and financial reforms have attempted to improve public procurement efficiency, effectiveness and outcomes by featuring ‘managerialism’ and operated a general shift towards devolution and decentralisation (McCue & Gianakis, 2001; Thai, 2001). The ‘managerialism and Performance’ approach emphasises the need to respond more effectively to the sensitivities of the client or the community; or to engage more fully the capabilities of all of the human resources at the disposal of the public sector. This is reflected in past statements of intention from the Australian Government’s procurement reforms:

> ... In seeking improvements to the accountability and administration of the procurement function, the Government expects departments and agencies to exploit fully procurement’s potential to add value to program delivery, contain and reduce costs in real terms and contribute to the achievement of broader policy objectives, particularly for industry development (Purchasing Australia, 1995, p. 1).
To be able to manage these more complex relationships and outcomes, management of procurement has in the last decades faced increasing pressure for devolution from centralised control to line agencies. Accompanying this devolution has sometimes been an assignment of greater flexibility, or varying degrees of deregulation within a broader governance framework and with more highly skilled managers.

The issues and options examined by Schapper et al. (2006) are further complicated by the structure of public procurement which in most countries is dichotomised between low value/high volume procurement (such as office supplies) and high value/low volume procurement such as major capital works. Most transactions in every jurisdiction will be of low value and high volume, including most office supplies for example, although most expenditure will be involved with high value, low volume exercises. This means that the former will tend to be managed through a simplified quoting system or even straight off a pre-existing contract. For higher value procurement a public bidding or tendering process will usually be the standard methodology. The capabilities and domains of expertise required in these different contexts (relating not only to contract specification and risk management, but also in the ongoing relationship and performance management) will differ considerably.

While accountability constitutes a critical driving principle of effective public procurement, its interpretation can vary considerably depending on the political context and the legal and regulatory tools at the disposal of a procurement authority (where large jurisdictions usually can rely on a number of tools and institutions to control the behaviour of stakeholders in the procurement system, but local or regional authorities cannot). Fox and Morris (2015) provide examples of that diversity of interpretations including:

- ‘accountability as punishment’ when unacceptable behaviour is dealt with through explicit and visible responses to satisfy the public’s confidence;
- ‘accountability as answerability’ when the demonstration of poor effectiveness due to dubious decisions or incompetent administration is dealt with by opening them up to scrutiny and attempting to learn from past mistakes;
- ‘accountability as expectation management’ by which government organizations and personnel manage the expectations of internal and external stakeholders to pre-empt future complaints about lack of consultation. It is particularly valuable to tackle issues when there is little agreement on objectives (and even less on performance – as in public procurement priorities) and can help governments ‘play’ the views of stakeholder groups against each other – sometimes to retain control of the agenda;
- ‘accountability as constraint’ characterizing any circumstance where individuals exercising power are meaningfully constrained by external forces (Apaza, 2007). Such external forces found across public sector activities might include judicial or legislative reviews, budget actions, reorganization, reporting activities, organizational or program reviews, or any number of other factors that limit the authority of managers and administrators.

Many of the constraining forces referred to above are constantly at work in government contexts, striving to foster visibility and understanding of managers’ activities and responsibility for their results, yet in the public procurement realm they often create sharp tensions with efficiency objectives, and are often circumvented on practical grounds. Because procurement entails a mixture of privacy and/or IP considerations, this is routinely used
politically to avoid having to disclose the details of contracts and thereby preventing genuine transparency, as it allows agencies to evade the demonstration of whether bureaucratic choices were genuinely made in the public interest. This suggests that balancing all forms of accountability described above would be needed, and likely costly. In forthcoming chapters, it will also become evident that there has been in many parts of the world a gradual shift from narrow accountability (concerned with whether procurement programs all meet their cost, schedule, and performance objectives, regardless of the level of involvement of contractors and their performance – while ensuring compliance with rules and regulations) towards ensuring performance in the much broader and more sophisticated sense of achieving desired, demonstrable outcome while being cost-effective (Green, 2010). The notion of accountability itself is therefore shifting towards evaluative functions, making performance measurement even more difficult given the excessively weak record of governments in general with respect to their evaluation responsibilities.

Governments at all levels frequently lack or underinvest in data-driven processes and capabilities to collect, analyse, report, and store program performance information, deliberately or not (Bradshaw & Chang, 2013). This is a constantly repeated issue in the public procurement literature, although its roots are much broader than the procurement mandate itself. But government procurement faces a deeper two-pronged problem – it must be capable of providing performance measures (to assess procurement programs, processes and methods in question) as well as monitor and reliably evaluate the performance of the contractors that interact with it and deliver the goods and services, as any client should. Each presents significant challenges because mature and effective processes are often lacking (Fox & Morris, 2015).

While nation-states might ideally harmonise performance measures to address program processes, outputs, or outcomes, and focus on whether a program is achieving its objectives, this remains an idealistic prospect in most cases (Government Accountability Office [GAO] 2005). At different scales such as local and regional, identifying relevant qualitative measures and collecting associated performance data, is not feasible for many types of government acquisition programs. Ensuring accountability in such instances is difficult, and it is unreasonable (and often legally untenable) to hold individuals and organizations accountable for program issues or failures without supporting data (Fox & Morris, 2015).

e) Capabilities required for efficient procurement

As noted in the discussions above relating to decentralization and to accountability, the organization of procurement capabilities within government agencies is poorly understood and has been insufficiently researched. Although acquiring suitable capabilities (skills, expertise, technical and other competencies) within the public sector might be a challenge for all of areas at specific times, what differentiates public procurement from other functions is that it performs a different role, depending on the nature of a specific activity. Sometimes the procurement function itself holds a prime responsibility over a system and is in a leadership role; sometimes it simply assists a specialized agency; other times it ‘serves’ an agenda (McCue & Gianakis, 2001). In specific contexts, procurement may also be considered an end user when ordering materials and services for the purchasing office itself. Some have argued that more research should be conducted to determine if procurement professionals ought to be knowledgeable about the essential purposes and procurement process or be experts in a particular
commodity area (Muller, 1994). This complex issue is compounded by the additional directions taken by procurement systems discussed in chapters 4-6 below:

There is a need for both; indeed, this distinction represents the two ends of the spectrum of knowledge, skills and abilities required given the level of sophistication and needs within a governmental unit manifested in the adaptability of the purchasing department to assume the new and expanding roles. Specific job expectations and the organizational structure of the agency will determine the correct mix for each situation. However, contemporary attributes of purchasing professionals must include business acumen, effective business communication skills, adaptability to rapidly changing priorities and the ability to negotiate (to effectively manage relationships within the agency and between end users and suppliers). The goal of every procurement professional should be to achieve best value (not necessarily lowest cost) in the face of the pressures, uncertainty, competing objectives and public accountability entailed in balancing costs and risks. If that goal is met, then all of the procurement agent’s "clients" have been satisfied. Those clients include elected officials, administrators, end users, suppliers and the public. (McCue & Gianakis, 2001)

Professional and moral contradictions arise as governments respond to demands to become more efficient and effective, and procurement professionals are expected to focus increasingly on the strategic aspects of procurement and less on routine transactions – that is they are told by their professional institutions and their private sector peers to be more proactive and less reactive in order to add greater value to their organization (Matthews, 2005). In reality, misunderstandings and disagreements about the role of the public procurement function masks its critical responsibility permitting governments to transform taxes and other revenues into consumption by government institutions at federal, state and local levels, ostensibly for the public good, a very high responsibility indeed. Yet Matthews (2005) notes:

However, tradition has decreed that procurement processes are managed by “unglamorous individuals” (Stewart, 1994) who are required, first and foremost, to satisfy the complex accountability processes of the government, an administrative principle, which is reinforced by recent failures of corporate financial governance. Furthermore, a search of contemporary literature shows little evidence that public procurement has penetrated the theoretical boundaries of public management or strategic management despite the profession’s efforts over more than a decade to develop its profile (Matthews, 2005).

Prier and McCue (2009) blame inconsistencies regarding the terminology and the body of knowledge used to understand public procurement and claim that ‘perspectives on what public procurement is, or should be, ranges from routine ordering to sophisticated analysis of government spending’ (Prier & McCue, 2009). They attribute to definitional ambiguities much of the failures in defining the field and in unifying its focus. They also consider the implications of the muddled nature of public procurement that has led to debate and uncertainty about the proper role of public procurement practitioners within that system. They ask: ‘Is public procurement a profession?’ and claim that to a number of practitioners and academics, the question remains unanswered, notwithstanding the universal recognition of its critical importance (by practitioners and academics alike) and that governments are likely to be more effective if public procurement practitioners engage in their job activities based upon a common public procurement body of knowledge, however abstract it may be (Prier & McCue, 2009).
Because delineating the boundaries and institutionalized activities of public procurement is seen as critical to shape the substance of what procurement employees ‘substantively do’ to help government allocate public resources more effectively, Prier & McCue (2009) focus on the need to develop a terminology to ‘both describe and prescribe what these individuals do, why they do it, and what additional benefits are derived from their doing their jobs professionally is necessary if they are to better articulate what value they add to governance’. They eventually provide their own diagrammatic representation of the system, and offer the following definition:

Public procurement is the designated legal authority to advise, plan, obtain, deliver, and evaluate a government’s expenditures on goods and services that are used to fulfil stated objectives (Prier & McCue, 2009).

The elements of that definition themselves might appear relatively innocuous, yet they present interesting challenges to the entire public sector insofar as they refer to design, to enactment of policy, to evaluation, many of which might sit uncomfortably with other areas of government that the latter prefer to have considerable control over and defy their jurisdictional authority. Importantly, they emphasize a subtle distinction between outputs and outcomes that anticipates critical elements to be discussed in chapters 4 to 6.

Outcomes are the delivered bundle of demands, but these actual demands may not get fulfilled for reasons that can include inadequate funding, corruption, improper buy decisions, among other things. This means that there is typically a gap between outputs (the delivered bundle of demands) and outcomes (the actual consequences of nested governmental actions). Because of this gap, an additional gap emerges between demands (constituent desires) and consequential outcomes. Consequently, there are at least two feedback loops to constituents about the problems and prescriptions for closing these gaps: one from outputs and one from outcomes. In turn, these “problems” serve the basis for additional demands in the future (Prier & McCue, 2009).

The critical importance of the evaluation role mentioned in their definition becomes clear when the gap between outputs and outcomes is clearly stated, modelled and embedded in public procurement systems, and eventually plays a role in the way performance is conceived. This is at the heart of the greatest challenges faced by contemporary procurement and underlies most of the malaises and failures encountered in that domain. It warrants further research as well as purposeful attention from practitioners and executive bureaucrats alike.

f) Outcomes and evaluation

This topic will become even more significant when the scope of public procurement is widened to consider secondary functions in subsequent chapters. Yet, it is raised frequently even in discussions restricted to functional effectiveness and is clearly relevant (yet not always acknowledged) in the analysis of accountability.

Snider and Rendon (2008) undertake a review of selected public procurement research to examine the nature of linkages established by researchers between public procurement and policy. Some (Arrowsmith, 1995; Bolton, 2006; Knight, Caldwell, Harland, & Telgen, 2003; Knight et al., 2007) portray the former as a tool, mechanism, instrument, or lever for promoting what they label as genuine “policies” (such as industrial and economic
development and assistance to historically disadvantaged groups). They argue that from a system’s perspective, what is being termed as policies ought to be labelled ‘desired results’ (whether outputs or impacts), which governments attempt to achieve through specific procurement policies. Snider & Rendon (2008, p. 317) argue that ‘such treatment of public procurement deflects attention from its policy aspect that determines the extent to which it contributes to desired outcomes’. Again, there is a fundamental tension between the instrumental purpose of procurement (getting the job done) and its policy mandate regarding coordination, accountability and increasingly undertaking problem-solving tasks in new domains previously ignored by procurement. They argue:

To the extent that the public procurement literature does address policy, it seems to centre either on structural policies or on allocative policies, but not both. The lack of attention to both types is notable, since achievement of the principles and other outcomes mentioned above are clearly functions both of structural and of allocative policies. Examples of discussions that focus on structural policies include those in the areas of domestic sourcing (Arrowsmith, 1995), use of purchase cards (Schooner & Whiteman, 2000), dual-sourcing (Burnett & Kovacic, 1989), green procurement, e-procurement, and several others (Knight et al., 2003). These writers’ lack of attention to allocative policies may be attributable to their choosing to think of procurement decisions (e.g., contract awards) as something other than policies. Nevertheless, such decisions are allocative public policies that confer benefits on some groups and not others (Snider & Rendon, 2008, p. 317)

While the sphere of alternative economic and social goals is explored in later chapters, the point that must be made is that defining effectiveness in those domains requires a clear articulation of expected outcomes and calls for evaluation strategies backed by credible evidence allowing to make productive judgments. Those aspects of government policy are precarious across domains and agencies and their integration with public procurement likely to constitute a most fundamental challenge.

4. **The many dilemmas appearing in contemporary public procurement systems**

Many authors have considered the nature and scope of reforms required to make a better use of public procurement while attempting to increase economic growth. This requires a better understanding of the complex nature of public procurement, incorporating the full range of issues associated with accountability, transparency, fairness, and economic efficiency (Kattel & Lember, 2010; Leenders & Fearon, 2008; Schiele, 2009). Again, the particularly complex nature of public procurement is what makes the coordination among numerous stakeholders (or supply segments such as government, businesses (suppliers), and political actors and advocates) so critical and the role of accountability and governance so significant for the effective implementation of government strategies when agendas can deviate rapidly from their original intent (Benner, Reinicke, & Witte, 2004; Blair, 2000). This becomes particularly evident when competing social and economic demands are promoted across different government agencies or outfits. A most typical example is with well-known “buy local” preferences and agendas (Ssennoga, 2006; Thai, 2001; Tucker, 1998) that may inhibit the actualization of efficiency (Qiao, Thai, & Cummings, 2009). Even when ignoring that most democratic governments across the globe promote open and fair competition in the purchasing process, arbitrariness results if purchasing professionals need to decide which value
or goal to pursue, and chapters 3 and 4 will discuss the evidence that there is a gap between governments’ stated goals towards efficiency and the observed choices they make towards favouring locals.

It is interesting but by no means surprising that performance of public procurement systems is frequently used to as a proxy by researchers and international organisations to measure the integrity of governments in power around the world, because it is an area where tendencies to deviate from original commitments is most frequently witnessed (Mamiro, 2012). And while there is no established metric to resolve the fundamental issue of ascertaining ‘uprightness’, it appears that successful procurement reform may ultimately be dependent on which values and goals are pursued by procurement professionals, and the means put at their disposal. But it would be unfair to depict the issue as one of bureaucratic inability to remain on the straight and narrow, as all participants with a stake in the process attempt to take advantage of the possibilities arising when vagueness becomes apparent.

Accordingly, McCue, Prier, and Swanson (2015) claim that public sector procurement professionals have become instrumental in any reform effort that requires government intervention into the marketplace, in a sense reaching far beyond their conventionally attributed role. Hence procurement professionals are struggling to balance a number of inherent social, economic and environmental tensions between ‘what is directly in front of them’ with ‘what they perceive as (or are told is) the right direction’ to follow on behalf of society, yet while operating in a relatively concealed way.

In articulating the dilemmas procurement professionals face, McCue et al. (2015) have produced a valuable reflection on the competing demands, conflated values and goals faced by procurement systems in democratic governments across the globe, in the context of a range of ‘wicked problems’ they attempt to solve and the government reforms they appear to repeatedly be confronted with. These authors concur with previous ones that ‘as a result, government purchasing professionals are being challenged to develop new flexible structures and processes that devolve purchasing responsibility, yet maintain accountability and control; limit the opportunity for fraud/ mismanagement while reducing operational constraints; increase economic efficiency while satisfying political demands for minority/local/small and women owned business participation; increase open and transparent competition while achieving best value; and applying best practices while confronting legal limitations’ (McCue et al., 2015).

Their discussion of those five dilemmas and implications for purchasing in the public sphere features five key inherent tensions which they believe preoccupy the public procurement field and will continue so in years to come, ‘with little guidance from policymakers or elected officials’ (McCue et al., 2015). As their outlook warrants a decent coverage and fits the purposes of this review, the discussion of those dilemmas below summarizes and includes many direct extracts from their analysis.

- **Public Procurement Dilemma #1 – The Accountability/Responsibility Dilemma: Developing Flexible Procurement Systems While Maintaining Accountability and Control**

Although Muller (1991) found several similarities in public and private sector purchasing responsibilities, other researchers have identified numerous features that differentiate the private and public sectors. Key differences include the nature of the inter-organizational network and the public service provided (Johnson, Leenders, &
McCue, 2003), the nature of the supply market and availability of private sector alternatives, and perhaps most distinctive is the nature of accountability and regulation (Harland, Gibbs, & Sutton, 2000). Through principles of transparency and accountability, the regulation of public procurement provides a pedestal of the legal, economic, and policy interface between the public and private sectors (Bovis, 2008). For the present purposes, focus ought to be on the differences emanating from the accountability and control functions utilized within public purchasing while ensuring the need for fairness and transparency.

Even within a transparent public procurement context, the restricted interface of public and private sectors creates incentives for corruption (Coppier & Piga, 2007). Efforts to curb corruption through increased levels of transparency often confront high implementation costs. If transparency is costly, organizations tend to stop short of implementing the level of transparency in procurement that would dissolve corruption. Consequently, Coppier and Piga (2007) argued transparency alone is not enough to reduce corruption levels, and institutions capable of conveying credible threats are necessary. Local and regional authorities are less likely to both be able to afford extensive investments in transparency measures as well as rely on strong compliance mechanisms, making them more prone to being perceived as easily corruptible.

While transparency may foster risk-averse tendencies, a higher level of transparency does not automatically lead to improved performance by purchasing agents (Humphreys & Weinstein, 2007). Since it is typically government administrators or elected officials rather than agency end-users who must answer to public criticism over perceptions of bureaucratic waste or budgetary mismanagement, some amount of sloppiness will occur that might not be easily detected. End-users are usually not as appreciative of oversight (beyond their immediate concerns or interests) nor are they as aware of the need for the steps taken to minimize the potential for fraud and abuse, as optimal levels of vigilance would entail. Moreover, because service departments are often perceived as reactionary (when they are indeed vigilant) instead of proactive in solving societal problems, a similar type of tension between line agencies and the procurement organization tends to develop over time. Thus, centralized procurement departments are often seen as roadblocks to effective service delivery by both elected officials and agency end-users, which results in calls for decentralisation reforms.

Nonetheless, purchasing agencies must continue to exercise a control function through strict adherence to legal, professional, and administrative requirements that define the purchasing process (McCue & Pitzer, 2000). Since one of the main factors in accountability is the control of discretion and the ability to fix responsibility, it is likely that tensions will develop when complying with the structure and policies that attempt to limit flexibility (Aberbach & Rockman, 1988). The need to respond to conflicting values and to deal with unforeseen problems calls for adaptable processes, and bureaucratic functions or roles willing to shoulder some institutional risk through experimentation. Thus, although it has long been recognised that no single central purchasing authority can fully control the behaviour of subordinate units (Appleby, 1947; National Association of State Purchasing Officials (NASPO), 1997; National Institute of Governmental Purchasing, 1989), a centralized purchasing system inevitably results in conflicts between the central purchasing department and the line departments it is established to serve. This dilemma highlights a key public procurement trade-off which centres around the tension between economic efficiency in the procurement of public goods and services and the public’s need to maintain control against fraud.
and mismanagement (Schwartz, 2010). This requires a delicate balance that at the least is difficult to achieve if not impossible.

- **Public Procurement Dilemma #2 – The Fraud/Red Tape Dilemma: Limit the Opportunity for Fraud/Mismanagement While Reducing Operational Constraints**

McCue et al. (2015) argue that one might be tempted to adopt a risk-management perspective to this problem, yet it is unclear how to gauge the competing values of economic efficiency (often measured in monetary terms) against the value of public transparency and accountability, because it is not readily apparent how this latter value should be measured. Nonetheless, attempts to institutionalize internal control processes in purchasing often have the unintended consequence of weakening attempts by service delivery managers to effectuate added-value in the organizational supply chain. Moreover, it is plausible that additional regulations result in goal displacement where efforts of purchasers are redirected toward proxy measurements and evaluations. Under these circumstances, the focus of purchasers would likely shift to reporting and offering a detailed accounting of their activities that is more reactionary rather than proactive, and more clerical than strategic. Indeed, in the long-run, procurement managers could become excessively risk-averse as the public is unlikely to comprehend that some amount of fraud is unavoidable in bureaucracies (perhaps optimal in an economics sense) and that ongoing pendulum swings between more or less red tape constitute the only mechanism available to test the pros and cons of tackling fraud, as a driving principle. Highly formal and prescribed procedures may in turn inhibit accountability in the procurement function by shifting the efforts of public purchasers to properly filling out forms which are perhaps inspected by others. In turn, this may absolve the purchaser of responsibilities for procurement mistakes, miscalculations, or poor decisions because the forms were properly filled out, the standard operating procedures were followed and the promptly recognised as outdated system design takes the blame rather than an inherent inability to maintain strategic intent.

- **Public Purchasing Dilemma #3 – The Principle/Agent Dilemma: Identifying “Best Value” in the Presence of Competing Goals and Common Agency**

This aspect has received a fair amount of attention from economists in various contexts and refers to enforcement challenges when information about effort, capabilities, intentions is unequally shared. Because the need to weigh price, cost, quality, and value considerations leads to discretion in procurement decisions, the means by which accountability may be attained when that discretion is exercised is a tricky question. In procurement, a principal-agent relationship in procurement involves a fiduciary relationship which arises because of the asymmetric knowledge and superior training of the purchasing-agent (Soudry, 2007). This means that the agent in charge of purchasing has the trust and confidence to act in the capacity of a “caretaker” of another’s rights, assets and/or wellbeing. This is implicit whenever the notion of ‘public interest’ is utilised. However, the purchasing agent cannot be given the full freedom to set the sum of requirements for the award of a public contract (Hettne, 2013). Instead, it operates on the principle that the agent-purchaser has a moral, personal, and legal responsibility to ensure that
the funds are expended responsibly, reasonably, and in compliance with the intentions, rules, laws, and concerns of the provider of the funds.

However, throughout the procurement process, there are inevitable opportunities to shirk these responsibilities when acting in a fiduciary capacity, often because of the presence of moral hazard which is the incentive to act in a way detrimental to one party after an agreement has been made, and in a way that cannot be simply monitored or verified. Obviously in this case, this occurs due to the personal gains to be derived from such action, the inability from third parties to ‘observe’ what is really exchanged (even if transparency is reasonable) and this opens the door to corruption. As such, there is a conflict of interest which describes the potential or real clash between what is beneficial to the agent in terms of adopting best practices and what is beneficial to the principal in terms of best value as operationalized through lower prices, better quality, and quicker delivery. To offer guidance on these matters, codes of ethics are developed to regulate public procurement and typically apply to all expenditures. They often include internal policies and statutes that describe the appropriate conduct for all public employees, but sometimes even when faithfully following these codes of conduct, the “best” value option may not be entirely apparent or clear because of competing goals and competing principals. These classical agency issues are amplified in the public procurement context when public interest is unclear, multiple agency relationships overlap, information about supplier quality is limited, strategic behaviour is feasible, agency decisions and processes are obscure and/or compliance mechanisms are weak.

Public Procurement Dilemma #4 – Short-Term Benefit/Long-Term Cost Dilemma: Short-Term Economic Efficiency vs. Long-Term Monitoring Costs

Internal controls are the protocols that ensure effective and efficient operations (Cox, 2008), and they are typically maintained through reliable financial reporting; compliance with applicable statutes; and adherence to administrative directives, rules, policies, and procedures (Schiele & McCue, 2010) consisting of the administrative assumptions, standards, values, and that promote appropriate purchases that have a clear public purpose.

There are numerous control activities which are often assumed to increase accountability, many described in McCue et al. (2015). At key stages in a contract selection or negotiation process, probity audits may offer control measures in real time as they provide independent reviews of government procurements and expressions of interest to ascertain whether procedures followed are consistent with appropriate regulations and principles of transparency (Ng & Ryan, 2001). Chapter 7 includes case studies associated with Aboriginal procurement where such sources have played an important role in informing the public about procurement irregularities. Such audits are typically employed in relation to high-value, high-risk transactions. The growth in probity audits reflects the argument that public sector managers can become more attuned to stakeholder expectations and more adept at developing risk management strategies if those are properly identified and articulated (Shead, 2001). In the context of public procurement, it also suggests that the domain and scope of that function have expanded beyond the internal capabilities of its staff and resources, and that the five dilemmas or tensions discussed here can easily overwhelm procurement officials.
McCue et al. (2015) also suggest that when the volume of transactions is the cause of difficulties, an additional level of control can be implemented by utilizing post-transaction reviews (Tadelis, 2012). This means that although departments may require pre-approval within their own units (even when they are not subject to pre-approval at the central level), a request for information is sent to the agency responsible for the transaction. Upon receipt of the explanation for the transaction, the central procurement office evaluates the purchase to determine if they have violated applicable policy and procedures. This is simply an example and is similar to a post-audit. Evidence has suggested either pre-approval or post-audit procedures in a traditional top-down monitoring system play an important role to reduce missing funds and corruption (Olken, 2007). But it is clear that only substantial and multi-layered bureaucratic systems can implement and afford such levels of specialisation.

All of these control activities are impacted by administrative risk assessments. It is no secret that administrators engage in control activities in order to reduce activities that might jeopardize the agency’s ability to meet its commitments. In terms of purchasing functions, controls are maintained to reduce risks which are uncertainties ‘about whether potentially significant and/or disappointing outcomes of decisions will be realized’ (Sitkin & Pablo, 1002, p. 10). However, in trying to close the gap between agency outcomes and expectations through monitoring and purchasing controls, more bureaucracy is required which can lead to further internal red tape, reduced productivity, increased complexity, and a reduction in marginal value-additivity.

It is also possibly why, despite repeated suggestions and advice that ‘evidence and evaluation’ constitute core components of procurement performance, the following chapters will show that they are almost universally and systematically lacking. The reason might simply be that government agencies (executives and politicians alike) are so risk-averse and unreceptive to criticism that they cannot deal with any form of embarrassment, but this is likely to be insufficient as an explanation. Evaluations are also frequently conducted symbolically (often because of prior commitments) when agendas have evolved and those responsible for past programs have moved on.

- Public Procurement Dilemma #5 — The Cost of Empowerment Dilemma: Responsiveness to “End User” through Decentralization while Increasing Training and Evaluation Costs

The key role of evaluation in delivering value of money emerges in this last dilemma. If one considers that decentralizing the purchasing function in a bureaucracy is equivalent to a functional reorganization, the presumed savings may not be realized. Indeed, the scholarly literature on the savings to be enjoyed from major governmental reorganizations or terminations of agencies should give reformers pause.

McCue et al. (2015) examine a number of complex scenarios regarding the drivers of public sector reform, and the role played by expected effectiveness and accountability perceptions, observing that ultimately ‘it is often as important for bureaucrats to be as politically efficient as economically efficient’ (McCue et al., 2015, p. 196). As there are no performance metrics, and attention is generally directed at ‘dollar-savings’, less care is given to the prices associated with loss of public confidence and accountability, let alone transaction costs imposed on the private sectors and lessened effectiveness of markets. In their intricate discussion, McCue et al. (2015) find that there is some empirical evidence supporting the view that radical changes, such as termination of organizations may actually increase costs in both the short and the long-run because of efficiency losses associated with
fragmentation of functionally-related activities into different agencies (Carpenter & Lewis, 2004). There are also numerous other empirical and qualitative studies that point in the same direction, especially that reforms contribute to higher costs in the short-run (Behn, 1978; Frantz, 1992; Meier, 1980; Salamon, 1981).

5. Chapter conclusion

Public procurement is primarily the area of public administration concerned with the acquisition by the government of goods, works and services from the market place, whether they are inputs required to carry out investment projects or those needed for the everyday functioning of government services and operations (Sanchez, 2013). Irrespective of whether the administration of procurement is at national, state/provincial or regional/district/local level it deals centrally with issues of efficiency and accountability. Because the amounts involved in various projects can be sizeable, there is considerable risk of abuse and patronage in awarding contracts. As was discussed above, procurement also raises numerous and sometimes overlapping principal-agent issues (where the government is the agent for ‘the public’, the procurement agency is agent for other government divisions, and decentralised (for instance regional) procurement officers are agents for the central procurement authority. They all face several dilemmas due to trade-offs for which no prescribed optimal solution can be mandated.

Traditionally, governments have addressed such dilemmas through appropriate regulations in the form of administrative procedures which procurement officials must follow or standards and expected outcomes with which they must comply (Sanchez, 2013). In addition, independent bodies have been established to enforce compliance with those regulations and alleviate the load of supervision on the government (Trepte, 2004). Public procurement thus forms a critical link between expenditure management and the attainment of government’s broader economic and social objectives. Inadequate procurement planning, outdated or poorly developed regulations, incompetent procurement management and poor contract administration result in inefficient procurement processes and distort resource allocation. Internally, these inefficiencies are manifested in the form of unnecessary costs and delays, suboptimal delivery of services and failed implementation of government plans. While traditionally policy makers regarded procurement as a self-contained administrative function to cater for government supplies and investment needs, the perspective has evolved towards considering it a system. When thinking about system effectiveness, a wider array of costs needs to be considered to determine what is desirable and good value: aspects such as transaction costs (some falling directly on the private sector), monitoring, evaluation, compliance and legal requirements deserve consideration in the short-run, risks of corruption and remedial measures associated with it must be considered in the medium run, while the implementation of improvement-driven reforms required to enhance the system’s capabilities and adaptive potential are critical in the long run.
Due to concerns about transparency of procurement processes and information, and with respect to the accountability of officials responsible for managing these processes, substantive procurement reforms have occurred in the late 1990s and early 2000s. Sanchez (2013) claims that these first-generation reforms were typically initiated in response to country-specific needs and triggers but had common attributes:

The underlying common element was the desire to bring the systems more into line with evolving international trends. Yet progress in implementing the reforms has been uneven. The reasons for these shortcomings vary from country to country:

- Reforming procurement procedures might not be sufficient when other related government subsystems are not modernized in a similar fashion.
- Markets, government needs, and procurement strategies evolve faster than governments can reform their systems: in part because many public servants still view procurement as a static function when, in fact, it needs constant adaptation.
- Old behaviours and entrenched interests retard the pace of reform, and many reforms remain incomplete because of the lack of political will or obstruction by those wanting to preserve the status quo (Sanchez, 2013).

From the efficiency perspective discussed in this chapter, it becomes apparent that procurement systems seek to gain public trust regarding their ability to strive and achieve efficiency, in a transparent way supported by accountability mechanisms.

Sanchez (2013) suggests there are some minimum conditions that must be satisfied for that public trust to occur:

1. open competition duly advertised as the preferred method of procurement with exceptions clearly established in the regulations;
2. objective and transparent tender evaluation and selection methods;
3. fair and balanced contract provisions and adequate contract management arrangements;
4. credible and independent grievance resolution systems that guarantee due and timely process;
5. adequate controls providing secure and confidential channels for reporting infringements of procurement regulations with a track record of timely subsequent prosecution and sanctions against guilty parties; and
6. public access to clear and relevant information and allowing public oversight of procurement operations and outcomes (including by civil society).

The brief overview of efficiency and accountability aspects in this chapter has highlighted that the concept of procurement has gradually been shifting (in the minds of specialists, but not necessarily the general bureaucracy) towards a strategic role rather than a mere administrative function.

Most advanced governments now consider procurement to be an integral part of fiscal resource management and a strategic government function essential to good government performance, commercial integration and the broader achievement of the country’s economic and social goals... [It is] seen as a
knowledge-based activity that would support good governance and enhanced accountability in a complex and sophisticated commercial environment. The procurement function encompasses the determination of needs; the selection of the best contracting strategy; managing the tendering, evaluation and contract award processes; managing the supply or construction contracts; ensuring delivery of goods and services as specified; and asset management and disposal. (Sanchez, 2013)

This chapter has also shown that even in the narrow context of procurement effectiveness, acquiring the needed capabilities is a central and overlooked issue, which will become increasingly problematic as its role becomes more strategic. Also, the motivations of politicians and senior bureaucrats could contribute to the problem:

Public procurement requires well-trained professional managers of procurement operations who are capable of working in complex and sophisticated business environments. Procurement activities are not isolated from the overall government civil service policies and management and, like all government activities, suffer from the impact of deficiencies in this area. Moreover, the recruitment, retention and promotion of quality personnel suffer most in those activities that politicians consider of lesser importance, or that are in their interest to keep weak and easy to exploit through patronage. This seems to have been the case in the procurement area even in countries where other government functions are better served. The consequence of this neglect is a crippling shortage of capacity throughout the system, particularly in developing countries. Many heads of procurement units and their staff do not have the expertise and formal training required to adequately perform their duties. ... The deficit in human capacity tends to be even more acute at the subnational levels (Sanchez, 2013).

Academic research suggests that these capabilities challenges, principle-agent distortions and evaluation inadequacies in themselves warn against expanding excessively (and too rapidly) the scope of procurement, until a new and sustainable equilibrium between efficiency and accountability is found in the procurement system. But this is only one part of the picture as other forces are at play and steering procurement in arbitrary directions.
Chapter 3: Public procurement, international trade and protection

1. Setting the scene: The rationale for promoting free trade

Like international trade in general, research on the interface between public procurement and trade (short for international trade in this chapter) has been dominated by theories and models developed by economists specialized in international trade theory. Sources consulted for this chapter include:

- a fair amount of descriptive work; including many publications originating from major economic bodies, such as the World Trade Organisation (WTO) and the Organisation for Economic Co-operation and Development (OECD) and others that often describe the rationale for treaties, their legal and political aspects;

- some theoretical work which can be highly technical and represents extensions of conventional neoclassical trade modelling, normally based on equilibrium methodology in which specific situations or hypotheses are examined in detail. Typically, research questions frame government procurement policies as a trade issue and contrast ‘open’ and ‘protected’ situations in an abstract representation and seek to reach normative conclusions about the desirability of various situations. Economists have put much effort into examining precise situations with specific logical deductions and rigid conjectures. Most views about the desirability of various trade scenarios are based on accumulated theorizing of that sort, and these are difficult to generalise. Empirical evidence is needed to establish whether these rigid scenarios fit the reality and whether their predictions are verified;

- some reports attempting to survey empirical evidence for the sake of either [a] mapping out tendencies at the international, OECD and Australian scales, [b] corroborating or refuting some of the theories proposed, and [c] in some instances propose new theories or raise questions capable of further driving theory work, or the search for new data sources.

This first section summarizes briefly well-known arguments and commonly held positions regarding international trade, while avoiding discipline-specific technical jargon. What follows can therefore be construed as a series of ‘stylized facts’ characterising relatively well accepted economic findings regarding international trade. While this might appear as a side issue, it is in fact central to the arguments found in the current chapter, and this shortcut will allow us to bypass thereafter the research literature strictly concerned with trade and focus on its public procurement aspects.

From the viewpoint of economic theory, facilitating trade is a most fundamental principle, appearing even in Adam Smith (1976) theory of the causes of the ‘wealth of nations’ linking exchange (trade in general) with the ‘division of labour’ (specialisation), the central process by which humans coordinate their activities, develop specialized knowledge and grow wealth. The macroeconomic theoretical demonstration that trading between partners with different endowments (or comparative advantages) is beneficial overall presents a comparable international trade assertion. For the majority of economists, advancing free trade (unconstrained exchange) is the essential principle driving economic advancement in a global sense and corresponds to the common notion that ‘growing the size of the pie’ is desirable, as long as there is a potential for all to benefit.
Correspondingly and simplistically, protectionism is deemed harmful in general, although the proposition appears less evident when the statement occurs in the context of multilateral trade. The reason is that it is well conceivable that if a country can conceal from its potential trading partners some protectionist activities it undertakes (for instance favouring local producers by creating barriers distorting open trade), that country might benefit in the short-run, until found out and experiencing retaliation from those trade partners. Countries might also blatantly use protectionism to attempt achieving other objectives such as protecting their industries, businesses or factors of production, for instance to catch-up with more advanced competitors. The outcomes emerging from those sorts of games appear quite speculative. As in the conventional infant industry argument, history has shown that ongoing reliance on protection rarely delivers sustainable outcomes.

For this review, it is fair to claim that there is a broad consensus among economists that free trade and the reduction of trade barriers is desirable for its positive effect on economic welfare, one of the few concepts that commands such agreement in economic theory. The application of the free market policy or doctrine to international markets is also the central mandate of the World Trade Organization (WTO) whose role is to challenge practices such as the use of tariff, subsidies, quotas and other non-tariff barriers that restrict free trade. The WTO maintains a watch on all developments that can compromise free trade, its concerns extending across all goods and services. It monitors all policies that can be deemed trade-distorting and scrutinizes measures that constitute threats to general access to markets and to market information. Accordingly, it is generally suspicious towards the role of public enterprises and their ability to bypass, undermine or reshape trade agreements.

Protectionist measures represent understandably the other side of the coin, whether their purpose is to shield workers or producers from global competition or provide support for lagging regions. This can create escalating counter-reactions and end up in a disastrous build-up of trade restrictions across traders reducing overall production of goods and services (‘wealth’) – the opposite of liberalization. The costs of protectionism for a given country can be very large but never clearly visible (except during recessions) and therefore easily underestimated. The negative impacts of widespread protectionism depend largely on situations, as the particular industrial mix and the nature of comparative advantage of a nation might make some protectionist measures beneficial in the short run, yet most likely detrimental overall when retaliation occurs. Eventually the net effects of protectionism on consumers and/or producers will depend on relative productivity, market power and the speed and intensity of retaliation. As protectionism proliferates, concerns extend about the impact of protections on the costs of imported goods (for consumers and producers), the likelihood of building-up further barriers (as retaliations accelerate), ensuing losses in domestic productivity (invisible to some communities, but easily modelled by economists), reductions in the movements of capital and other factors, etc.; all these amounting to significant net and generalized losses in the long-run.

But if there is such a broad consensus among economists that protectionism has a negative effect on economic growth and economic welfare (while free trade and the reduction of trade barriers to trade has a positive effect on economic growth), why is protectionism so widespread in reality? This question has historically attracted much interest, especially if setting aside the crude assumption that states are simply attempting to cheat because ‘they can’. Some researchers observe that liberalization of trade can cause significant and unequally distributed social and economic losses, in particular the economic dislocation of workers in import-competitive sectors. This
realisation by governments reacting to such an economic tragedy has historically generated the infant industry argument; the need to protect underachieving (non-competitive) sectors until they are ready to compete again. Government support of this type constitutes a common and relatively understandable populist policy reaction, although generally short-sighted from the evidence available as those sectors rarely recover adequately while protected to gain the capabilities needed to fully confront competitive situations.

A major problem lies with the fact that many protectionist policies are hidden, in contrast to tariffs, subsidies or quotas which send clear signals and are visible to all. A variety of strategies have been and continue to be used by nations to achieve protectionist goals. These include interventions justified debatably by the need...

- to protect technologies (patents, technical and scientific knowledge – many researchers view international patent systems as curtains hiding protection),
- to prevent foreign investors from taking control of domestic firms, to prevent foreign firms from dumping (anti-dumping aims to prevent foreign producers to enter a market by selling at prices lower than they do in their own countries and domestic markets),
- to intervene and control exchange rates at strategic times to affect relative costs,
- to conduct ‘buy local’ campaigns and further advocacy promoting consumer parochialism,
- to create administrative rules and regulatory barriers for consumer protection (through food safety, environmental standards, electrical safety, labour standards and other restrictive certification requirements limiting access to imports) thereby advantaging local firms, and;
- to undertake preferential governmental spending and supporting either favouritism or opaque procurement decisions, which is where this topic comes in.

The discussion above constitutes a simplified characterisation of contemporary economic trade beliefs and analysis of trade policy. When extending specifically to considerations of public procurement, it follows that economists would generally concur that in an international context, government procurement activities (which they identify as a legitimate and substantial source of demand for goods and services globally) ought to be treated in the same way as other forms of exchanges contributing to economic growth and welfare. The vast majority would advocate that international country-level procurement should as much as is politically feasible be unrestrained or ‘open’ and conducted in a manner that does not impede on either private and public forms of international trade.

2. Public procurement and trade liberalisation

In practice, the research interface between public procurement and liberalization policies is much less developed than other trade policy areas. This is incongruous given its sizeable economic value – as public procurement accounts for some 5-20% of GDP of OECD economies depending on accounts and measurement methods and reaches even more in LDCs. It is also inconsistent with most nations’ declared disposition and intentions to promote free trade, especially when government procurement could provide such a clear signal of goodwill (transparency, good governance and competition regime) for states favourable to trade openness. In contrast, the literature notes that public procurement is ‘an area of state/market relations that has remained relatively untouched by the liberal paradigm of the 1980s and 1990s’ (Woolcock 2013, p. 154), for reasons incompletely understood. One possible explanation lies with the nature of procurement governance and its relationship to
domestic affairs. Contrarily to international tariffs or subsidies which need to be made visible to the international community to operate, and which apply to entire countries, public procurement can remain essentially home-focused in its expression, its administration and its operation as well as relatively unintelligible to outsiders.

Large international organizations in charge of trade and political coordination agendas have taken the lead to disrupt this state of affairs; and pushed to include procurement in general trade agreements but can only do so when large numbers of nations strongly embraced such a position. The political mandate of the European Union (EU) to integrate many of its economic institutions has played a major role in bringing public procurement to the fore, because of its integration and levelling goals that aim at bringing firms and workers from the entire EU towards a notional level playing field, in particular for all to be able to compete to supply goods and services across its member states. This is reflected in the large share of the research literature on public procurement that has examined the challenges (legal, political, institutional) that had to be addressed to harmonize previously and essentially country-driven rules and pursue a so-called ‘liberalization agenda’ across the EU. According to Woolcock (2013), liberalization has in practice been limited to the scheduling of purchasing entities across nations to make them comply with national treatment rules. This implies that the concept of ‘effectively liberalising’ only refers to rules that explicitly prohibit formal (de jure) buy-national preferences. Yet, most states continue de facto to discriminate in favour of local suppliers in a number of indirect ways (especially when decisions and contract award procedures are opaque); a fact that is observed and endlessly reiterated in the bulk of the literature examining the relationship between public procurement and trade.

Another key consideration is that liberalization efforts have taken place in the context of free trade agreements of various types, sometimes bilateral and other times multilateral, which have followed relatively arbitrary pathways and where public procurement is often treated as secondary to other trade. It is noted that it is unclear whether these agreements constitute genuine attempts at diffusing the principle of liberal procurement regimes in a global sense, when in fact their formulations entail negotiations framed around reciprocity rather than efficiency considerations (Woolcock, 2013), whereby procurement domains appear gradually liberalized by making incremental concessions. This type of tit for tat bargaining is hypothetically economical for all if it helps avoiding future detrimental barriers and retaliations. But it suggests that what drives it is the political capital it confers to governments wanting to be seen as ‘making deals good for the nation’ rather than genuine openness. In fact, trade agreements as policies must contend with overwhelming costs due to implementation complexity, as well as implicit opposition from vested sector interests and are worthwhile mainly if they last beyond the short run. It seems likely that the bulk of politicians at all levels of government favour the political capital gained from the short-term expediency of ‘buy local’ policies over statements supporting liberalization and whose benefits while huge are dispersed and rarely discernible (Woolcock, 2013).

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1 Most of the literature consulted dates from the area prior to Brexit and prior to the Trump administration’s actions destabilizing current free trade regime. Furthermore, what has been written since is largely speculative.
When incorporated in free trade agreements, procurement regimes typically include rules about:

- **Coverage**: Elements included (goods, services, projects and works) in state-owned and parastatal organisations (of various types) and specify whether these apply only to central government or sub-central entities (state, provincial and municipal);

- **Treatment**: prohibiting *de jure* preferences for local suppliers, offsets that condition contract awards on investment in the host country (to be discussed further below) or transfers of technology or intellectual property also useable as offsets.

- **Transparency** which can cover laws, implementing regulations, information on specific calls for tender or technical specifications. Rules requiring information on contracts awarded, reasons for rejecting tenders and statistics on who wins contracts also help to facilitate competition.

- **Technical specifications standards** so as not to prejudice competition by locking in preferred suppliers that use country-specific design or prescriptive standards.

- **Exceptions** for reasons of human health, emergency procurement, national security and national interest such as spending on hard military equipment (weapons) which is always excluded.

- **Compliance and bid-challenge provisions** for aggrieved bidders as well as general state-state dispute settlement mechanisms. Penalties for non-compliance may take the form of project cancellation or financial penalties (limited to the costs of bids or exemplary damages). There is normally also provision that allows for no contract to be awarded or to allow illegally awarded contracts to be completed if it is in the public interest. But this provides for flexibility that can be abused to limit competition.

- **Specialist committees** to monitor the application of public procurement provisions and provide technical assistance. (Woolcock, 2013; World Trade Organisation, 2018)

Trepte (2005) provides an overview of the approach promoted by the WTO, GATT and OECD, by linking the principles they developed with the scope, coverage, and contract award procedures for tendering, as supported by those mainstream organisations. Gourdon, Bastien, & Folliot-Lalliot (2017) also authored a report that describes an OECD taxonomy of measures affecting trade in government procurement processes that features a strategy to collect evidence about comparative procurement behaviour of various countries, and which is currently being piloted. The OECD has produced a vast array of such documents whose coverage ranges across large numbers of international cases and exploring areas of complexity usually difficult to document at the country level, including the treatment of private-public partnerships (OECD, 2013), audit and monitoring principles, sectoral issues (i.e. utilities, defence, etc.), performance measurement, contract management, remedies, procurement tools, advertising, thresholds, bribery, corruption, integrity, innovation, bid rigging, etc. These are readily accessible on their OECD directory website.

Despite all the theories, principles, and efforts to diffuse liberalization ideas, all authors agree that concealed domestic discrimination remains the dominant and most widespread government procurement practice, irrespective of any envisioned trade agreement proliferation or explicit liberalisation narrative. The question which has for a long period of time preoccupied and eluded the specialized literature on international procurement is:
Why? Researchers who examined specifically that question initially and more recently (Branco, 1994; Carboni, Iossa, & Mattera, 2018; Hoekman, 2017; McAfee & McMillan, 1989) scrutinised examples from many countries to determine whether they appeared to have similar motivations. They documented explicit domestic preferences policies in many countries (Canada, Australia, New Zealand, USA and Turkey are often mentioned) and explored in particular the logic of the US ‘Buy American Act’ where some states specify %value targets to enforce domestic supplies preferential treatment, often operating adjustable rates to support small businesses or assist further military equipment domestic industry.

But domestic favouritism is largely implicit, which is easily demonstrated by observing that despite layers of EU policies to allow inter-state competition between member states, only 2 percent of European governments’ procurement contracts are awarded to foreign bidders (that is EU states other than the one awarding the contract), and that despite the absence of overt or explicit preferential procurement policies in any of those states since such measures would in fact be forbidden (Atkins Management Consultants, 1998). Domestic favouritism therefore emphatically dominates, despite the general agreement that discriminatory policies ought to be eliminated, and despite the setup of institutions such as GATT to promote liberalization and curb preferentialism.

Vagstad (1995) depicted the public procurement dilemma as a particular case of ‘asymmetric information’ surrounding national affairs and their conduct, making favouritism difficult to detect as it is universally conjectured that it ensues from ‘human nature’ that it is beneficial for anyone to favour their closest neighbours. Another related reason is that governments, even though collectively the source of the idealist prescription, have been simply reluctant to implement it on practical grounds and because they are biased towards short-term values (Breton & Salmon, 1996). This can be rationalised by a combination of phenomena: the impact of populism on political interests (when chances of being re-elected depend on demonstrating a will to produce local jobs and local contracts) and the ways lobbying and donations (often payments for favours) are embedded in the political process.

To that extent, governments simply prefer domestic firms to profit over foreign ones, and they have incentives—both at the personal and political levels – to discriminate against foreign suppliers (Branco, 1994). In fact, a number of potential ‘rational’ motivations (with different degrees of plausibility) have been proposed and theoretically demonstrated to explain domestic preferences; for instance, if there are cost advantages for foreign firms, and it could be beneficial for the government to discriminate in favour of the domestic firms to stimulate competition and minimize expected procurement costs (McAfee & McMillan, 1989).

Other researchers prove the same essential question a bit differently: Why don’t treaties work for procurement even when signatories commit to open their procurement markets to other treaty members – and often even forbid explicit “buy national” policies? In a multi-country context, economic theory suggests that representing such situations as a prisoner’s dilemma is revealing. If countries playing the trade game agree on what is gained by agreeing to open and can observe each other’s actions, they would curb domestic favouritism. This would constitute an optimal outcome of sort, but each country would also have an incentive to deceive (and gain even more at the expense of the other) if they can get away with it. Any real-world event or contextual change creating uncertainty (and they are frequent and significant in the context of government procurement) would open up new
opportunities for any member of a trade alliance possibilities to engineer actions favouring local interests, although none of these, nor their logic or motivations to pursue them would have been made explicit.

The likelihood of retaliation is of course highly relevant in a first-mover’s decision to cheat, which might with more or less competence also consider further potential deterioration of trade and ensuing overall loss of wealth. Systematic responses from state to state since the adoption of ‘Buy American’ leading to ‘Buy Chinese’ and to ‘Buy Canadian’ demonstrate the point, as these constitute examples of trade deterioration (Lamy, 2009; Rickard & Kono, 2014). In theory, trade agreements are expected to essentially affect firms or government behaviour (in charge of implementing public procurement) by raising the reputational costs of noncompliance if they are observed discriminating against foreign suppliers (Keohane, 1984), but this appears ineffective in the context of procurement. This reputational effect appears to work in other trade domains such as monetary law, but only when it is possible for all to clearly observe violations:

However, observing and proving procurement discrimination is difficult because many aspects of procurement decisions are inherently non-transparent (Evenett, 2002). Without overtly violating international rules, governments may, for example, split up large contracts so that the value of each of the constituent parts falls below the threshold stipulated in the procurement agreement. The opacity of public procurement makes it difficult to prove violations of international rules. The European Commission recently concluded that, “discrimination in public procurement is very difficult to detect or prove”, after an evaluation of the effectiveness of EU procurement legislation (European Commission, 2011). Although 46% of EU businesses reported that they believe local preferences influence the outcome of public procurement procedures to a “high extent,” none could provide concrete evidence of discrimination (European Commission, 2011). The difficulty of proving violations of international procurement rules may allow governments to discriminate in favour of domestic bidders with impunity—even as signatories to international treaties (Rickard & Kono, 2014).

So, while a treaty appears as a ‘win-win’ situation, the incentives to cheat (as in the prisoner’s dilemma context), combined with lack of observability (and implicitly transparency & accountability) of procurement processes, provide a credible explanation for the persistence of favouritism.

Yet, when needed, public procurement agreements are sometimes called upon by governments to cover themselves when they want to award a contract to a foreign supplier, perhaps for reasons of cost, quality or technical expertise, but at the political costs of making local enemies. Rickard and Kono (2014, p. 336) note that ‘The UK government recently awarded a train-building contract to Siemens of Germany ahead of the UK-based arm of Bombardier [...] decision which was widely criticized [but] the government responded to criticisms of their decision by citing international procurement rules’. This ability to play the game both ways seems to fit the unpredictable decisions that would arise in a dynamic version of the prisoner’s dilemma in which governments might sometimes test the water and apply their perceptions of political advantage to either favour locals and other times not. Hoekman (2017) suggests ways to make trade liberalisation treaties more effective, but at a high bureaucratic cost and serious risks of flexibility loss. When interviewed confidentially in research surveys, national procurement authorities and specialists concur that contracts are systematically awarded to domestic firms, and increasingly so when the governments in question represent regional or local authorities (Rickard & Kono, 2014).
has in the past been estimated that ninety-nine percent of all local authority contracts in European Union countries were, in fact, awarded to domestic firms (Martin, Hartley, & Cox, 1999).

Recently Carboni et al. (2018) have proposed a useful and quite comprehensive categorisation of forms of discrimination towards foreign firms which spans overt and covert barriers:

- Tariffs;
- Set-aside programs – governments induce procurement agencies or contracting authorities to place a share of their purchases with specific types of suppliers, for instance domestic smaller businesses;
- Buy-national provisions;
- Price preferences for domestic suppliers – applicable in the evaluation stage, consists of providing some fixed price advantage to domestic firms;
- Overt and direct contracts to domestic suppliers;
- Obligation to supply products with only domestic inputs – creating a practical advantage;
- Obligation to have subsidiaries in the country to bid;
- Language barriers – perceived by many in the EU context as very significant;
- Strategies to keep contract values below the thresholds for domestics, and purposefully unbundle large projects to make them inaccessible by foreign firms; and,
- Bureaucracy with documentation requirements clearly unfavourable to foreign organisations and individuals;

3. Public procurement as a deliberate economic management instrument

Although portrayed in this chapter as an aspect of international trade, the procurement of goods and services by the public sector can be assessed through both micro-economic and macro-economic lenses. The former is concerned with safeguarding equity in access to markets as well as ensuring that competitive pressures operate on the tendering process (as they do in auctions) to optimize public value per dollar spent (similar to arguments covered in chapter 2). But the State has also the task of ensuring that the national economy runs smoothly and public procurement is paradoxically often conceived simultaneously by governments as an instrument to intervene directly in the functioning of the economy. It has been used to pursue various macro-economic objectives such as trade-cycle regulation, the protection of publicly-owned enterprises, industrial development and the achievement of better regional balance (Jeanrenaud, 1984; Carboni et al., 2018). These four interventionist fields warrant further scrutiny:

   i. Trade-cycle regulation

During a period of relative recession, Keynesian budgetary policy would prescribe an increase in the level of orders placed or the drawing up of procurement programmes to help overall demand and thereby to stimulate economic activity – of course as long as these orders are awarded locally. Procurement thus can serve as a regulator of the trade cycle; it is its best-known instrumental function, since it has been used for that purpose for a long time. It is recognised that purchases of goods and services form the budgetary element most appropriate for use in trade-cycle policies. Measures taken in this field (through public procurement) offer the advantage of being reversible. Purchases can be reduced to normal levels as soon as cyclical conditions allow while the same cannot be said of the
creation of jobs in the public sector. Among the range of goods and services purchased, orders with an investment character (purchases of capital goods, construction of buildings or civil engineering works) are the ones most frequently used in budgetary policies of the Keynesian type. By nature, these require explicit discrimination towards local businesses.

ii. Protection of domestic markets

Public procurement can also be used to protect the domestic market from foreign competition (Mougeot & Naegelen, 1984). In most countries there are restrictions on competition designed plainly to ensure that the greater part of public procurement is met by domestic enterprises, sometimes by means of selective and single tender bidding schemes, through residence requirements, or by means of stringent technical and financial requirements being applied to foreign contractors (Lowinger, 1976, p. 451), although these practices are not always clearly visible to the public. Economists have long noted that this function of protection of domestic markets gives rise to definite conflicts between macroeconomic objectives (job creation, improvement of the balance of trade) and microeconomic ones endeavouring to obtain supplies at the most economical combination of price and quality. Similarly, when purchasers are dealing with an oligopolistic market, or even a monopolistic one, the most effective way of promoting competition should be to open the market to foreign firms.

iii. Improvement of the competitiveness of industry and promotion of industrial redeployment

Perhaps of more recent origin, the third instrumental function encouraging protectionist public procurement (at the international trade scale) aims at improving the competitiveness of specific industrial sectors and encouraging structural adjustments in sectors believed to hold the key to future national competitive advantage and/or needed to strategically support key advanced technologies. These arguments obviously link the implementation of a protectionist trade policy to industrial innovation strategies. While the topic of the connection between procurement and innovation is not included in this review (due to scope limitation choices and the fact that empirical evidence in that field is particularly under-developed), it undoubtedly constitutes an increasingly important research area. It is worth mentioning that some proponents of more proactively strategic industrial and trade policies have long contended that this would involve developing a strategic mix promoting the liberalisation of certain industries or sectors side-by-side with investing and redeploying strategic capabilities. Thurbon (2015, 2016) has recently emphasized the government procurement opportunity to shape industrial policies, and contrasted Australia’s free-trade facade with the industrial policy approach of Asian tiger economies such as Korea (Amsden, 1989) that they argue undertake tacit indicative planning. That literature typically claims that Australia has been particularly ineffectual at aligning investments in strategic skills to deliberately position its workforce for new competitive advantages, due its commitments to free trade rhetoric.

iv. Remediying disparities between regions

Public procurement is clearly a matter of considerable importance for the regions, since it can be a source of jobs and incomes, and central governments’ attempts to revitalise regions often through infrastructure projects. Procurement orders placed by public authorities may moderate or aggravate disparities between regions according to the way in which they are distributed geographically. As the general intention is normally to influence directly the distribution of production and incomes, several countries have introduced rules favouring economically
disadvantaged regions into their procurement procedures, and sometimes they even feature as acknowledged exceptions in major international trade agreements. Italy has long reserved 30% of all public contracts for firms in the South and both the UK and Germany have had explicit policies to redistribute production and employment to selected regions through public procurement.

Most researchers and commentators agree that the addition of a new instrument (here public procurement) to the conventional instruments of regional policy (infrastructural policy or financial incentives) must be examined with care, given that this form of instrumental utilisation inevitably involves restrictions on the rules of competition, and creates short-term costs to the public (to consumers and producers in particular) and long-term ones when the manipulation of purchasing policies hampers structural adaptation (Jeanrenaud, 1984). Yet few researchers have provided evidence or a framework that would allow governments or researchers to determine whether this is a good way of using public purchasing.

A different direction is taken by Evenett and Hoekman (2004) in their review of the advantages and disadvantages arising from participation in open international trade from a procurement point of view. They initially reiterate that while the most common objective of procurement policies remains unquestionably to obtain “value for money” for the government, this is not to say that only ‘economic efficiency’ matters although it is clearly the key metric from the strictly economic viewpoint. They likewise denote the existence of ‘non-economic’ objectives which might well be acceptable to or valued by a community (i.e. dealing with excessive market power, supporting small businesses, helping regions, boosting employment for disadvantaged groups), despite not being strictly instances of economic efficiency maximization.

For any such objective, public procurement might offer a tool for action, which comes at a cost that ought to be understood and assessable. They argue:

*Given the widespread adoption of non-economic objectives by governments, economists have researched extensively their consequences, especially in the area of international trade policy. The main finding of this research has been to show that the amount of economic efficiency sacrificed to meet a non-economic target varies considerably across instruments—and so it makes sense to determine which instrument attains the desired goal with the smallest reduction in economic efficiency. In so doing, economists have argued that it is better to tackle the direct source of problem at hand rather than take measures that only indirectly bear on the matter* (Evenett & Hoekman, 2004, p. 8).

The question is therefore not only what would be the best trade-off position, but also: Are there more efficient ways or alternative policies to address the same problem? And is public procurement the best way to handle those non-economic targets?

*For example, governments may want to promote the number and production levels of small firms by awarding these firms state contracts even though at least one large firm submitted a lower bid. An economic approach might point to a different course of action: first, the government should identify the impediments faced by small businesses and take measures that directly remedy them. If, for example, the critical impediment to the growth of small firms is access to financial credit, then policies should be directed...*
towards bolstering the supply of credit to small firms—rather than using indirect means such as deliberately increasing the sales of small firms through government contracts.

The arguments above are not theoretical hair-splitting—they have direct relevance for the reform of government procurement policies. Governments may be more inclined to eliminate a procurement scheme that favours a certain industry if they know that other forms of state intervention can better attain this objective. Furthermore, if the chosen form of state intervention directly tackles the constraint of the favoured industry’s or group’s performance, then economic efficiency can be improved also (Evenett & Hoekman, 2004, p. 9).

Subsequently, they examine favouritism towards domestic suppliers in the context of international trade (sometimes referred to as discrimination towards foreign suppliers), whether explicit (de jure) or implicit (de facto) and uncover instances across the three distinct stages of procurement: tendering, evaluation, and award notification and review procedures. They show that numerous opportunities to exercise favouritism in a more or less visible manner occur at all stages, many of which have already been discussed. This includes attributes of the tendering process that might make it less transparent than desirable or that prejudice foreign firms, price preferences during the evaluation (explicit or not) and subjective preferences for known entities (parochialism) as well as review procedures that appear less costly for domestic organisations. Depending on the context, perceptions by foreign players that they are discriminated against might be common despite being difficult to prove and will most likely be influenced by their belief about the extent of corruption in a given government (and society) surrounding the procurement system. The authors make the important point that while ‘international disciplines’ (the influence of international competition on behaviour at home) can be in the long-run a key driving force to address discrimination and corruption, it is difficult to determine what level of distortion (away from the efficiency ideal) is optimal, for each of many possible alternative goals.

One reason for such complexity is that malfeasance in the form of bribery or corruption ‘narrows the circumstances under which measures to eliminate procurement discrimination yields benefits’ (Evenett & Hoekman, 2004, p. 29). Participation in a General Procurement Agreement (GPA) in those circumstances can result in higher prices being paid by taxpayers and indirectly impact on the quantity demanded by government which in turn impacts back on foreign firms’ market share, etc. The net effect of belonging to the GPA is perhaps reduced, in part because of predictable adjustments and because they are contingent on the degree of bribery, corruption and other pre-existing sources of distortion. This can appear as an argument against participation in GPAs or for investing in additional measures to improve procurement governance practices at home pre-GPA. Those questions are far from settled and it appears that participation in GPAs or widespread use of discrimination constitute only part of the calculation to be made.

Buigues and Sekkat (2009) concur that the potential competition effects of open procurement demonstrate that such influences are complex, depend on the particular details of the procurement settings, and can be both positive and negative. This complexity often requires a trade-off between costs arising at all stages that might affect the number of bidders participating as well as the pressure they will decide to exercise to reduce price/unit of value. Where these decisions are made on the basis of distorted incentives, a detailed analysis of procurement practices in a particular market would be necessary in order to establish whether they cause competition concerns.
This suggests that further attention should also be given to the linkages between procurement policy and other government policies, such as industrial policy, competition law, and policies towards small and medium sized enterprises (Evenett & Hoekman, 2004).

It is interesting to observe how the benefits from opening borders to public procurement from other States have been promoted by the Asian Development Bank (to member states) which lists the following outcomes (Asian Development Bank, 2013):

- Enhanced competition for state contracts delivering greater value for money;
- Greater competition stimulating product and service innovation as well as process improvements by bidders for state contracts, including public suppliers;
- More cost-effective choices available to public buyers;
- More informed price benchmarking for comparable goods and services, deterring collusion among bidders;
- Use of increased transparency facilitating ex-post reviews of procurement outcomes;
- Greater incentives to stick to norms of due process, transparency, and the like to ensure full compliance with trade commitments;
- Erosion of entitlements among well connected domestic suppliers; and,
- Greater benchmarking against international best practices in procurement;

It is clear that beyond the first three ‘public value’ and competition items, the remaining advantages lie principally with the pressure put on bribery and corruption (probably the greatest need in many parts of the region), and interestingly on the ability to review outcomes due to increased transparency.

A further hypothesis arising from economic research is worth mentioning, insofar as it provides a complementary motivation for using discriminatory governmental procurement policies, as they otherwise always presume that protectionism is the main motive. Breton and Salmon (1996) have explored the possibility that discrimination may be an efficient method of dealing with the problems posed by the existence of incomplete contracts (‘agency’ was discussed in the previous chapter), namely contracts whose terms, while observable by the signing parties, cannot be verified by third parties and are, therefore, legally unenforceable. Many procurement contracts (complex projects, advanced services, technology-based solutions, etc.) fall in that category. Discrimination can be conceived in that framework, as a way of stabilizing the relationship between principal and agent, creating a quasi-partnership and assisting in the creation of a stream of quasi-rents to the benefit of suppliers, which they will strive to retain by not shirking on their contractual commitments. For this to work, the principal (government) must establish a sustainable relationship with a domestic agent; because proximate agents are easier to monitor. Discrimination towards selected domestic firms can therefore be an instrument that serves to make incomplete contracts enforceable. But that closeness becomes problematic and questionable for the risks of corruption it generates.

4. **Evidence related to public procurement in international contexts**

The section above suggested that even in the well-researched context of trade, theoretical analysis is often incapable of providing definitive or universal advice about the optimal design of public procurement policies due to
distinctive circumstances and government objectives, including conjectures about domestic failures and the likelihood of corruption, as well as context-specific connections with other policy objectives related to industrial governance.

Metrics would have to be formulated to verify the effectiveness of specific procurement programs, and the data that would be needed to empirically clarify the complex connections between public procurement policies or practices and the diversity and changing nature of objectives pursued by nations appears overwhelming. When suitable macro-economic time series can be constructed based on relevant indicators, it is difficult to attribute changes to one intervention, and disentangle alterations to procurement policies from related policy directions. Data specifically depicting procurement attributes is uncommon and often disjointed, as underlying practices are subjective, neither properly documented nor easily detectable. Economists have called on experimental games and similar investigations to assess the outcomes of narrowly-specified auction-type designs, sometimes suggesting ways to curb incentives or the ability to cheat. These are thought-provoking, but they tend to be excessively confined in their context and implications. Experimental designs are far from being suitable for the complexity intrinsic to procurement systems dealing with multiple objectives, which make the latter such a challenging domain for research.

Given the comments above, any empirical analysis of questions of interest surrounding public procurement is valued if it helps corroborating or modifying existing beliefs, improves conceptual clarity and enhances our ability to assess evidence reliability. Taylor (2012) interpreted countertrade offsets as concealed distortions and as a form of discrimination. This required assessing the advantages and disadvantages of several proposed metrics, and similarly determined that a fundamental shortcoming in the literature had been a lack of guidance on how government ought to measure performance of countertrade agreements, given the diversity of objectives they considered.

Much of the efforts to review empirically the status of international public procurement have examined the impact of trade agreements on public procurement behaviour and performance, using statistics about origins of suppliers as a proxy, given the difficulty of observing covert barriers or procedures. Such research repeatedly demonstrates that despite the existence of trade agreements, discrimination against foreign firms still applies in almost all countries around the world (Carboni et al., 2018). Gordon and Messent (2017) undertake a comprehensive historical analysis of OECD activity (controlling for many extraneous determinants) and find that participation in the Agreement on Government Procurement appears to be significantly connected efforts to reduce home bias in government procurement. Yet it is unclear whether this is really due to the fact that ‘disciplines’ arising from the agreement are effective, or to prior and parallel political commitment to undertake less discrimination and participate in such an Agreement were made by those nations who sign up.

Shingal (2015) has conducted extensive econometric analyses of home bias in government procurement including a review of existing evidence. Like Evenett and Hoekman (2004), he finds that the preference for domestic suppliers may be driven by a range of procurement-specific and domestic policy factors:

- the nature of the good or service being procured;
- the value of the procurement contract;
- the extent of domestic competition;
• practical considerations of the tender;
• compliance costs;
• regulatory burden; and,
• the domestic policy environment (the fact that governments are also saddled with other objectives than efficiency).

He also reiterates the now well-established empirical finding that procurement home bias has been documented in major economies during the recent economic crisis (Evenett, 2009a, 2009b) which confirms that the propensity to spend on home businesses is stronger during recessions. Research has linked electoral cycles with the size and composition of government spending to conclude that governments increase spending before elections to enhance their chances of re-election; and are on average more likely to award contracts to domestic firms in those situations. This is also consistent with the findings in more recent procurement literature that looks at the effect of political connections on the allocation of procurement contracts. The possibility that international disciplines on procurement (such as the WTO’s plurilateral agreements) discourage home bias in public purchase decisions by eliminating discrimination against foreign products and suppliers remains a conjecture. Even if it was documented, it would be unclear whether this would result from their provisions on transparency; from requirements that their signatories guarantee greater contestability of their public markets or because more effective enforcement mechanisms would be considered.

Shingal (2015) deduces that governments are concerned with efficiency in the award of public contracts after documenting a dependable empirical relationship between country-specific productivity differentials and the relative share of foreign procurement across countries, irrespective of stated objectives. In contrast to other research, he finds no tendency on the part of governments to use procurement policy as a tool for aggregate demand management (while in recessions), nor does he observe any evidence of political election cycles having an impact on governments’ sourcing decisions in the direction of a home bias. However, the data reveals that membership of the World Trade Organisations’ GPA is not found to increase market access per se.

5. In-State implications of international procurement agreements or discrimination

A central question for the current review is whether and how lower level governments and their procurement authorities interact with trade agreements, as well as objectives and directives formulated and framed by national governments linked to trade. We are interested in the implications of seeking either openness (pursuing broad welfare-enhancing free trade aspirations) or prioritising other goals such as those discussed above (macroeconomic adjustments, protection, industry restructure and competitiveness or regional redistribution) on local procurement options. It is difficult to theorise those questions without considering the legal and constitutional constraints and requirements characterising specific nations. Whether state, provincial, regional or local authorities can use procurement mechanisms to pursue their own objectives in ways which contravene national commitments to openness (or to protection of markets) is also a political question, as was illustrated in recent public debates about the ‘Buy Queensland’ approach, in the context of their potential breach of bilateral trade and procurement agreements between Australia and New Zealand. The lack of clarity arose partly from what
has been termed a historical ‘gap in coverage’ of the Trade Practices Act that arises because little efforts were made to address the fact that State and Territories’ governments appear to have ‘independent power to enact laws within their own jurisdictions expressly exempting particular conduct and certain bodies from its operation’ (Healy, 2012, p. 6). This differs from the UK where competitive neutrality seems to have been endorsed generally, across levels.

Many of these issues have been considered carefully in the Harper report (2015), and some were partially covered in the Senate Finance and Public Administration References Committee Report in its discussions of Commonwealth procurement procedures. Yet, the relationships between government entities’ procurement autonomy, constitutional obligations and international trade agreements remains equivocal until it has been legally or politically tested, as can be gathered from experts considering how various Australian competition and consumer laws apply to government commercial activities and struggle with legal interpretations of ‘trade’ and of ‘commerce’ (Griffiths, 2016). The current literature review does not aim to untangle such recent developments still playing out, but to identify what academic research has had to offer regarding those issues – and it appears once again inconclusive.

Kim (2009) usefully considers the situation of the interaction between local politics and international agreements in the US and presents it as a dilemma by which various layers of government, in particular the central and state governments, play dual roles as market participants (clients of commercial trade exchanges, domestic and international) as well as market regulators. In that context, joining the GPA can reduce the discretion of both central and state governments as regulators. Kim examines how sub-national governments respond to an international agreement that limits their discretionary powers and queries why some state governments (within the US) have joined the GPA and others not, noting also that some of these states have ‘buy in-state’ provisions (giving preferential treatment as a percentage to in-state bidder for selected products). What is distinct about the US situation is that the federal government has joined the GPA, but it has not entered into an international agreement that would pre-empt state laws without the consent of those states, consequently allowing state governments the freedom to not participate. This has led to very intricate positions, and much legal testing given the diversity of state positions towards local favouritism.

Kim (2009) conjectures that the government as a political actor wants to maximize political support and has an incentive to pay above the value of goods and services (in conflict with its role as a market participant) in exchange for political support or illegal bribes, linked to the heavy flow of lobbying and campaign expenditures for large government contracts. The choices made by American state governments to join or not the GPA can be theorised as being between [a] preferences for local spending (bringing ongoing political benefits) or [b] joining (bringing benefits for consumers and taxpayers, due to better prices and lesser corruption associated with competitive pressures). The empirical cross-section analysis undertaken by Kim (2009) connects the decisions made by the states (to join or not) to a number of state attributes. These include proxies of political competition (indicating the extent to which a state is subjected to strong partisan competition), of protectionism pressures (resulting from a combination of foreign employment, union membership, economic insecurity), and other institutional and economic features (historical fiscal constraints on taxation and revenue sources such as the ‘Tax and Expenditure Limitation constraint’, the extent of decentralisation, the size of the state’s economy and its deficit status).
Empirical results find strong support for the ‘political competition hypothesis’, whereby the existence of strong party rivalry and bids for government contracts through lobbying play a key role in pulling state governments towards their political roles at the expense of their client-agent (on behalf of consumers) role. Ultimately, the tension between short-run political (and economic for some constituents) gains and long-run distributed economic growth and welfare is what appears to be at play.

Abutabenjeh, Gordon, and Mengistu (2017) also examine American In-state preferences because the diversity of positions taken by US states offers opportunities to test the relationship between protectionist policies apparent at both the national and state levels. They compare carefully the debates and articulated opinions presented by representatives at both levels and conclude that the rationales for adopting discriminatory procurement or preference policies in international trade and the states’ contexts are indeed similar. This attention to statements of intention is useful given the limited consideration given in the research literature to the motivations behind choices made by In-State jurisdictions, as well as the quasi-inexistent data on actual procurement decisions and procedures. If the similarity is empirically confirmed, policy implications regarding the benefits of trade and ongoing advantaging of close neighbours that were analysed at the national level might apply equally at different jurisdictional levels.

The paper argues that In-state preference policies replicate the protectionist policies cited in the context of international trade, which are also referred to as discriminatory procurement policies or preferential procurement policies in the sub-national literature. Again, the link is established on the basis of the sharp similarities between the rationales and arguments for or against protectionist policies in international trade and the preference policies argued and implemented by state governments.

As they overview state and local preferential policies, they identify the same types of goals that were discussed in the preceding sections such as protecting specific industries threatened by competition deemed unfair, helping regions or states deal with sudden recessions, protecting local, small, minority or other disadvantaged businesses for whichever political reasons and goals might be acknowledged. They suggest a differentiation between those political goals and the creation of economic opportunities ‘for in-state businesses by protecting them from out-of-jurisdiction competitors and to encourage them to engage in productive economic activities for the benefit of their state’s economy and its residents as a whole’ (Abutabenjeh et al., 2017; Hefner, 1996; Krasnokutskaya & Seim, 2011; McCrudden, 2007; Moreland, 2012; Qiao, Thai, & Cummings, 2009). This appears arbitrary, as the latter is equally political at the regional and local levels. Hence the notions of creating more jobs, keeping current jobs in the economy, adding sales, adding income, and increasing local tax returns by paying the tax dollars to the state are highly politically motivated and anchored in short-term gains for those pursuing those policies that might or might not amount to strategically sound directions.

They are generally believed to be promoted in the main by vested business influence and special interest groups to the detriment of taxpayers, honourable producers and consumers (Strayer, 2011). Significant challenges have been brought to court in the US by companies having made largely superior bids that were excluded from specific state procurements contracts, the states themselves arguing that they were pursuing ‘legitimate state interest’ (Hefner, 1996, p. 34). The demonstration of those interests must have been based purely on legal principles (that the state ‘knows’ what is best), given the absence of any explanation or economic evidence documented in that literature.
regarding the reasons to push out bids from out of state suppliers. Similar to their national counterparts dealing with international trade, state governments continue to intervene in their state economies by using procurement preference policies to protect in-state businesses from being undermined or undercut by large conglomerates that may come from within or from neighbouring states (McCrudden, 2007; Qiao et al., 2009). In many respects the rationales used by governments to intervene in international trade are strikingly similar to the rationales state governments employ for the adoption of in-state procurement preference policies, being centrally motivated by protectionism. This suggests that the international trade framework provides a reasonable guide to understanding the implications of policies that would interact with in-state preferences (Abutabenjeh et al., 2017).

6. Conclusion

In the international trade context, the role and impact of public procurement has been relatively neglected at the policy and at the research levels. Given that other trade areas have become increasingly liberalized and regulated by trade agreements, it could be argued that it is in governments’ interest that it remains under the radar and that governments retain discretion over that domain. Large organisations in charge of promoting free trade (WTO, OECD, EU) have started to direct their attention at this sizeable market and the way it has been used to address other social and economic structural problems, most often simply upholding protectionist interests. Agreements such as GPA and bilateral ones have increasingly included procurement provisions forbidding explicit attempts to discriminate against foreign firms.

Yet, empirical evidence suggests that favouritism within government procurement is rife, irrespective of those agreements. This is in large part due to the fact that [a] de facto protection is very difficult to demonstrate and counter-measures are not easily enforced and [b] governments and state officials in general have conflicting interests in that area. The latter are conflicted between their longing for personal political capital (gained from interferences that benefit local private interests or other highly visible agendas) and their duty towards their constituents’ long-term economic welfare (the widely disseminated advantages of liberalisation that benefit incrementally several consumers and indirectly taxpayers).

Beyond the universally observed dominance of discriminatory-protectionist procurement practices, empirical evidence is mixed with respect to the effectiveness of procurement clauses within trade agreements. It is also more or less inexistent (or inconclusive) with respect to the impact on welfare, across all categories of motivations proposed as reasons to justify favouritism.

A few researchers have compared the context of international procurement procedures and that of intra-country practices and found them fairly similar, suggesting that the same basic logic seems to apply across levels. It is apparent that the intensity of political competition (high rivalry and strong lobbying) plays a key role in explaining the likelihood of adopting discriminatory policies (supporting local suppliers) at the expense of the interest of the majority. If the comparison stands, then lessons and conclusions (theoretical and empirical) from the trade context might well apply similarly to the local and regional contexts.
Chapter 4: Place-based discrimination implications for local and regional public procurement

1. Introduction

This chapter overviews research that has considered how regions and localities have utilised public procurement to boost their local economies, in terms of how they choose or decide when and how to favour their own regions, and the various impacts this results in. Although some of the arguments feature clear-cut conflicts with efficiency goals, thereby building on dilemmas considered in the previous two chapters, it is useful to re-examine their framing in the context of ‘buy-local’ approaches considered routinely by local and regional government authorities. This is in part made necessary because in the local context (from this point referring to both local and regional), the logic of using procurement as a means to boost local business activity and retain as much as possible economic flows and associated employment close-by constitutes a predictable aspect of local political discourse. In contrast, the impact of any ‘local-first’ political mindset on efficiency appears highly diluted and derivative. Consumers and taxpayers from those local economies are generally not in a position to ascertain the burden they inherit from the relaxing of competitive pressure arising from those departures away from least-cost production and supply conditions. That lesser visibility and conflicting views of regional advantage is a somewhat distinct issue, and approached differently by different communities of researchers and policy advocates.

Furthermore, our preliminary scan revealed that academic research based on or attempting to produce credible evidence on that scale is scarce, so that distinguishing beliefs about the legitimacy of specific policy approaches from lessons emerging from evidence-based or coherent theoretical analysis will be both sorely needed and challenging. In any research domain in which vested interests are at play (and public procurement is such a domain given the significant potential rents that can be extracted by partakers in both the private and public sectors), it is important to examine the motivations, the logic, the policy arguments and implementation difficulties inherent in and around the object investigated, and carefully assess the useability and strength of any evidence put forward. It must be recognised that local or regional public procurement has attracted a considerable grey literature based on excessively descriptive and opinionated sources highly enthusiastic about the seeming discovery that spending locally by governments is likely to benefit locals in the first instance; a message that armies of consultants have historically repeated to regional officials in various forums. In that sense, websites of government, corporate, consultant and other origins make relatively assertive claims about the desirability of local preferential treatment (sometimes referred to by researchers in different parts of the world as favouritism or preferencing, two terms used by researchers cited in prior chapters) apparently based on narrow and ill-developed logic featuring a remarkable dearth of both theoretical and evidence credibility. Even within the strictly academic sources on which this chapter will focus, the research content of interest is generally more descriptive, and claims of impact or outcomes are rarely backed up by theoretical logic or convincing evidence.
For the sake of convenience, our presentation of the arguments makes an arbitrary distinction between procurement discrimination following strictly geographical motivations (of the ‘buy local’ type covered in this chapter) and those aimed at supporting small business enterprises that often present a different logic (to be discussed in more details in chapter 5), although they are often inter-connected in practice and in policy. In fact, many research discussions present arguments that mix motives (buy-local, SME and entrepreneurship, environmental sustainability, innovation) without much care apparently being given to philosophical and technical consistency and plausibility, let alone the ability to unambiguously demonstrate outcomes. This is symptomatic of the same malaise that explains limited documented efforts to evaluate the effectiveness of such policies, as by bundling loose arrays of populist and indistinct objectives, it becomes impossible to uncover a meaningful program logic (in the evaluation sense), and verify the soundness of any claims.

Even the interpretation of the expressions ‘local or regional’ can vary significantly not only across contexts, but also in substantive terms. Some researchers refer to the notion of ‘local scale’ to denote issues having to do with localized procurement, and the ability of small places with limited means to use public procurement to influence their destiny, and where local means people living close-by or linked as a community. Other times, the regional dimension is contrasted to the urban, and where research distinguishes rural, remote or peripheral economic or social systems, which is not necessarily about small size per se or proximity.

It is worth reiterating that the absence of empirical evidence is noted by most research in this space. The few instances of evidence appearing usually collect survey-type opinions among or around procurement authorities (purchasing officers, procurement bureaucracy at various levels) reporting their observations regarding private and public behaviour, and what those surveyed believe would explain those behaviours. These can provide valuable clues about collective beliefs, but rarely constitute trustworthy and independent verifications of the drivers and impacts of public procurement policies in local contexts.

2. **Broad purpose and logic**

Local authorities customarily and systematically use explicit and implicit discriminatory public procurement practices, although they feature varying degrees of intensity, candour (with respect to having clear objectives and willingness to self-assess) and transparency (McLachlan, 1985). Researchers on the other hand are much more divided about the why, when and how of preferencing at the local scale, which sometimes reflects their disciplinary or ideological inclinations. This in turn affects the frames of analysis about the pros and cons of policies, and many supporters of discrimination in particular do not even consider the possibility that discrimination might have significant implications for the costs of government purchasing operations, on consumers’ and taxpayers’ welfare, on corruption risks and ultimately for their effects on trade harmonization across localities or regions. As with all forms of restriction, the increased costs brought about by any form of discrimination are borne by the buyer of the protected goods - i.e., government buyers in the first instance as agents for the public, and on behalf of the local communities they serve.

The lack of consideration of those matters in parts of the literature suggests perhaps that the analysis tries to understand the point of view of local decision-makers’ interests, rather than that of the local community, and that such frameworks are not very dependable to address those delicate questions about optimal policy design if they
are not equipped to consider and test theoretical arguments incorporating a sophisticated definition of public interest or economic welfare. At the other end of the spectrum, conventional economics might envision the pursuit of local goals as a calamity because necessarily clashing with broader social and economic welfare aspirations in ways that rarely consider how perceptions of developmental inequalities affect policy motivations, and counter-reactions. This explains why Flatters & Lipsey (1983) notoriously argued that discriminatory public procurement within a country or state could critically undermine growth and would constitute a political threat in the context of the Canada’s own common market integration, or even would be undesirable for the creation of an economic union between Canada and the United States.

As a generalisation, writers promoting the use of public procurement for local goals appear prone to support using public procurement as a means to remedy regional economic difficulties (whether cyclical or structural) while being relatively vague with respect to the full implications of interfering with procurement processes and setting any time limits for such interventions, in contrast to more conventional economic analysis. The following research questions raised indirectly by some commentators present critical elements, questions or possibilities generally overlooked, which clearly follow from the points raised in chapters 2 and 3:

- If the actual internal logic of discriminatory public procurement is to provide an enduring solution to regional economic challenges, how does it actually help transform (rather than temporarily boost) regional competitive advantage (or business competitiveness) sustainably for a given industry, sector and what level of preferentialism is desirable, etc.; which leads to the secondary question of how long will incremental adjustments be required, will complementary policies targeting capabilities be needed, when would discrimination not be needed anymore (given that such policies rarely embody any precise conjectures or theories about how change will occur and when intervening will become obsolete);?
- What are the costs and negative impacts of discriminatory procurement for local consumers, local taxpayers, local workers, the financial health of the jurisdiction, etc.;
- What are the costs and disadvantages (and/or advantages) of discriminatory procurement on local businesses that do not get access to procurement (in different industries, or by choice or by lack of competitiveness, etc.) yet operate in the locality; those can either be trading with favoured firms (suppliers of their inputs, purchasers of their outputs, direct competitors); such considerations could be extended to the impact of favouring on non-local businesses otherwise active in the locality that might diffuse valued technology, etc.;?
- What might the impact be on government operations and public confidence surrounding the critical topics of corruption, bribery, red tape, administrative efficiency, legal costs, and the connections between local procurement and other decisions linked to infrastructure development, etc.;?
- Do local and regional authorities have the analytical and evaluative capabilities to assess the fitness of the strategies adopted against community aspirations (as opposed to government or bureaucratic motivations) and to determine whether public procurement is an appropriate tool, as it appears to be chosen for the relative ease with which it can be altered, at the expense of transparency? Local governments are notoriously inept at affording, conducting and responding to independent evaluations. Paradoxically, flimsy evaluations advice or activities are often provided by external consultants who conceivably have vested interests to
support the conclusions that their clients seek (to ensure ongoing commercial opportunities), and which even when direct interference does not occur rarely can access independently collected and credible data sources.

We could not find in the relevant research literature any comprehensive or systematic analysis integrating such matters applicable to the local-regional scale, whether resulting from a specific case study or built as a purely abstract set of conjectures. We determined to extract fragments of discussion or analysis across a variety of research papers, although these often adopt pre-held positions on the desirability of using public procurement to address local issues and goals. Irrespective of the nature of those positions, all papers we came across that offered interesting insights on these matters are partially reviewed below if making an original contribution.

Another preliminary observation pertaining to the local/regional literatures concerned with the application of public procurement regards the usage of the term ‘strategic’. For instance, Murray (2007) reviews past debates about whether procurement has evolved into a truly strategic function (Marshall & Lamming, 1997; Steele & Court, 1996) and examines what strategic procurement or purchasing process would entail. This opens up a discussion on the connection between the democratic role of elected members within the strategic procurement process and the actions and judgments of procurement authorities (in the case of large jurisdictions) or experts and consultants (for smaller local jurisdictions). Chapter 2 showed that public procurement is a legitimate policy instrument if a direct connection exists that not only ensures that community views are reflected in the procurement decision channels, but also that it is reflected in transparent implementation. The validity of that process depends very much on the institutions that ensure continuity between so-called ‘local interest’ and procurement agency strategic inclinations. It is important that any focus on ‘strategic matters’ is not undertaken at the expense of legitimate representation; and that the articulation of ‘the public interest’ remains legitimate and consistent, even for the sake of delivering goods, services and infrastructure that claim to bring about positive impacts on citizens’ daily lives.

An ambitious working definition is subsequently offered by Murray (2007):

Local government strategic procurement is the process of determining the corporate procurement strategy, mapping and overseeing the high-level procurement portfolio, defining and challenging the desired procurement outcome, determining and managing specific procurement plans, identifying, evaluating and challenging procurement service delivery options, contract award, post-contract management and review.

That definition is suggesting a degree, willingness and capacity of local authorities to devise strategic directions to find out what citizens need (or would support if it is proposed as hypothetical) and use public procurement in a transparent manner to do the job. Perhaps this is idealistic because few local communities can boast well-formulated, understood and unified aspirations. Especially when the reasons to call on public procurement in the first place are to solve entrenched local economic challenges such as cyclical recessions creating losers and winners, entrenched disadvantages for some groups experiencing structural disparities, displacement for others, threats from aggressive outside businesses exposing lower local competitiveness, etc. Then, assuming the existence of clarity or even an agreement within the community about its ‘aspirations’, let alone about how to achieve them, and the ability of governments and bureaucrats to action excessively complex transformative
agendas is questionable. And whichever mechanism is deemed preferable to reveal community preferences cannot and should not be hidden from public view and left with procurement experts.

Another difficulty with a naive endorsement of local strategic capabilities and foresight is that it disregards the outward facet of strategy, concerned with the implications for, and the reactions of every other locality facing similar issues and perhaps confronting similar dilemmas. Qiao, Thai, and Cummings (2009) who point out that interstate commerce is often overlooked in arguments relating to local preferencing, at least in contrast to international trade where it features centrally in the analysis of discrimination policies (discussed in chapters 2 and 3). The deceptive logic of assuming that local government procurement is relatively inconsequential in the bigger picture of overall trade because its impacts on other jurisdictions or localities is negligible and will consequentially remain unnoticed, is also problematic. Yet most analysis at the local or regional scale takes the position that discrimination as a policy direction is desirable if one can assume that a local government will get away with it. This is why they ignore the possibility that local or regional trading partners might retaliate (McLachlan, 1985) and local procurement research and advocacy has mainly focused on the business of creating local employment in the short run as the ultimate end in itself. Flatters & Lipsey (1983, pp. 47-49) had shown early that the general logic of the ‘prisoner’s dilemma’ might well be operating inside a nation, which lead them to fear that if local, regional or state governments acted in isolation and pursued discriminatory policies without concern for retaliation, this could collectively damage the overall public interest, that cross-regional trade would break down and result in diminished economic welfare.

Yet local governments must be cognizant of the mutually similar attitudes held by their peers and neighbours and must comprehend their inter-dependence when they engage in bilateral agreements to not damage the ability of each other’s suppliers to compete. As for national strategic trade agendas, in periods of widespread unemployment and quite limited freedom to resort to tariffs, non-tariff barriers become all the more attractive to governments. Discriminatory procurement persists as an obstinate residual barrier to economic integration and the policy of last resort for governments trying to convince voters that they are not afraid of taking actions (McLachlan, 1985; Page, 1981).

The same can be said of the issues of good governance and bureaucratic efficiency which remain important at the local scale but appear much less often considered in local procurement research. An explanation might be that it is self-serving for bureaucrats to ignore those aspects when committing to use procurement budgets on local suppliers and focus entirely on the local employment benefits while ignoring the costs of running the bureaucracy:

*Our analysis has served to make the increased costs quite explicit. It has also raised the possibility that they may be all too compatible with the interests of the bureaucracy, which is subject to only partial control. It would also be disingenuous not to point out that discriminatory procurement offers substantial political rewards, as the practice presents opportunities for placing contracts in politically sensitive locations and rewarding supporters with business opportunities. There is neither a visible nor an invisible hand guiding either bureaucrats or politicians into implementing socially optimal policies (McLachlan, 1985).*

The critical implication is that while it is taken for granted by many that procurement-driven local spending is ‘a good thing’, the rationales provided by mainstream backers appear either trivial (the long-standing and naive in its
scope observation that more money recirculates through an enhanced multiplier effect due to increased local linkages usually attributed to local supplier coalescence – see Cabras, 2011) and/or quite misleading as a narrow analytical position. By focusing entirely on the convenient and positive side it is apparent that what is forgotten is:

a) Possible or likely retaliations leading to reductions in bilateral or multilateral local trade (the first point made above); and,

b) The possible costs and benefits encountered in efforts to maintain efficiency, transparency, equity and integrity in procurement and other bureaucratic processes; that is monitoring, avoiding corrupt behaviour, maintaining public confidence, etc.

It is important to also consider that local businesses located in regions might not be disadvantaged or less competitive in any real sense, and therefore to reflect on the consequences of protecting them. Morgan et al. (2017) examine many contentions regarding the advantages of ‘proximity’ and the benefits of purchasing locally in various sectors, based on asset-specificity and privileged knowledge, as a defence for supporting close and local relationships. Many of these arguments and examples appear credible at a glance and imply that those proximate relations constitute genuine sources of competitive advantage. But they also suggest that proximity should shore up better bids (allowing for the possibility of lower costs or higher quality options) and does not require any preferential treatment – and that unnecessary preferential treatment could in fact undermine incentives to strive for genuine efforts to improve competitive advantage.

A key related aspect is that discrimination itself imposes an administrative burden on local authorities since the rationale for the level of protection, the duration of the policy, and a myriad of conditions to apply, as well as implementation must be agreed, tested, revised and monitored. Proper implementation also imposes that all those aspects must be clearly enunciated to potential bidders and to the public if trust in the system is to be maintained. This applies both in terms of process scrutiny and transparency, as well as being able to articulate and justify any position relating to favouring locals, in particular regarding impacts on other members of the community not directly benefiting from the pro-local discrimination, and instinctively suspicious towards unhealthy connections between local authorities and those businesses or individuals directly likely to benefit.

Some researchers such as McLachlan (1985) for instance refer to the ‘capture theory’ of regulation and of bureaucracy (traditionally associated with Stigler 1971) to depict discriminatory procurement as a means to create economic rents for influential interest groups (in some cases local suppliers and local government staff; but the theory equally can apply to appropriation by specific groups of workers, regulators or decision-makers within local authorities) at the expense of the local community. The losers include generally [a] consumers (who typically pay more for given services), [b] taxpayers subsidizing the potentially intricate procurement process as well as covering the expandable compliance and legal costs (when disputes arise or corruption is detected), [c] potentially workers from other firms (in or out of the region) who do not win the bids nor collect those rents (where the net costs and benefits for them are unclear), [d] other local industries paying too much for local government services (as consumers but with potential negative impacts on employment), and of course [e] businesses in other regions unfairly treated and likely to retaliate.
While the capture theory of regulation is well acknowledged and applies relatively well to the analysis of local favouritism in procurement, a further difficulty arises with public procurement because it circumvents the processes of inspection about rationale, logic and fairness that apply to other policies and areas of government intervention:

*Insofar as the policy does not involve any overt subsidy, and thereby evades the debates in the legislature on the budget, it commends itself all the more strongly to the beneficiaries. For these reasons it would appear that, even when formal policies are adopted to limit or remove discrimination, the achievement of genuinely freer trading conditions for public contracts will be a continuing uphill struggle. This is because implementation of policy takes place through a bureaucratic and political filtering process that is far from neutral in its motivation and effects. ... there is a deep-rooted feeling, common to politicians, officials, and industry, and invariably supported by the organs of public opinion, that the taxpayers’ money should be used to purchase domestic goods and not foreign goods.* (McLachlan 1985, p.370)

The above suggests that the reduced degree of formality and lesser scrutiny characterising local and regional affairs make it all the more likely that public officials will endeavour (and to some extent may believe themselves justified) to allocate resources on behalf of their constituents on the basis of their subjective judgments about what is good for their communities, in ways that they see fit, and justify it as ‘keeping business’ in their localities. This implies that the prospects of corruption are significant. The chronicle of absolute preference laws which had their roots in 19th century local U.S. politics is instructive. Short (1993, p. 70) notes for instance that preference was given to local printing businesses because for most of the 19th century, “public printing contracts helped support the back shops of the local partisan press which, in turn, supported a given local political party”, a historical precedent linking explicitly procurement discrimination with corrupt politics. Qiao et al. (2009) claim that local favouritism (as well as social forms of procurement) have long been criticized for violating the basic principles of public purchasing: equity, impartiality, open competition and the lease cost to the taxpayer. Even US organisations such as the National Association of State Purchasing Officials committee and the National Institute of Governmental Purchasing have consistently expressed views against the practice of preference treatments, arguing that it should be eliminated; recognizing from their professional positions at the forefront of the process that preferencing is strongly promoted by business and special interest groups, that the net effect is costly, and that preferencing is a slippery slope.

The requirement of greater transparency is further undermined when too many objectives are simultaneously considered and likely to clash with each other. This had led to excessive amounts of discretion awarded to local public procurement officials with respect to supplier selection methods (Williams, 2014). Case study research has investigated whether ‘local preferencing’ is really effective, with respect to the purported objective of sustainably using local businesses and workers. One typical difficulty that many local procurement authorities encounter is the low level of capacity held by those preferred local suppliers, and the fact that granting them alluring larger contracts puts further pressure on their capacity. They eventually find themselves having to seek outside assistance (to obtain capabilities – workers, equipment, technology, materials, management skills, etc.) which runs counter to the assumptions and rationale for preferencing them in the first place, as they must employ increasing proportions of outside workforce, inputs and technology rather than locals, a problem exacerbated in poorly diversified or
remote economies (Ernst, 2000; Prier, McCue, & Bevis, 2008; Ernst & Kim, 2002). The topic of favouring small businesses is discussed in greater detail in the next chapter, but a very similar argument applies when we must question the ability of local procurement authorities to assess the propensity of local business to invest locally and employ locals (which they will always proffer). Assessing the real benefits to the local economy would therefore entail envisaging situations where those local businesses will need to import skills and capital that they cannot find locally in sufficient quantity or quality, or face the costs to make appropriate adjustments (training locals perhaps, but creating real delay and comparative costs to those buying their goods and services), and the temptation for local authorities to cover up their poor judgments by starting to subsidize those inefficient local producers to ensure they ‘deliver’ at the consumer and taxpayer’s expense. Accordingly, some commentators have even questioned the legitimacy, and legality of geographic preference laws (Short, 1993; Ernst 2000). Others have alerted to the possibility that restricting procurement to locals might result in less quality of goods and services (Gosen, Babbar, & Prasad, 2005) and sometimes blamed the limited competencies of local procurement officials as well as their suspect incentives (Nijaki & Worrel, 2012; Qiao et al., 2009; Wilson, 1995). Similarly, the argument that higher levels of local content is always better has been challenged at multiple levels (Warner, 2017).

What is clear at the local scale is that the procurement preferencing of any given supplier or industry might have distorting and detrimental effects on the local economy that local authorities are unlikely to be in a position to predict, let alone control or correct. In the same way, perceptions of corruption and pro-local discrimination can lead to the erosion of commercial reputation or value and affect negatively investors (from outside the local community) and potential developers, create perceptions of greater risks to project delivery and operational performance in part due to the potential for ongoing arbitrary intervention, and hold back inward investment and technology transfer by international suppliers into the region. Depending on the degree of regional diversification, it can also lead to declining international competitiveness of domestic industry (due to bureaucratic inefficiencies) and potentially even result in an unsustainable dependence of the local economy and its government revenues on the sector that has been artificially protected.

Despite the observations above, the key topics of ‘rent capture’, potential for corruption and bribery, and cross-jurisdictional retaliation (overt or covert) are eluded in much of the local-regional development research literature, which is perplexing. We will suggest the following postulates:

- The potential for rent capture surrounding local/regional public procurement needs to be systematically investigated (given its established importance in the analysis of larger jurisdictions); as it is significant but remains unclear whether the likelihood of distortions is greater at that scale. An intuitive conjecture would suggest that on the one hand it might be more difficult to hide corrupt behaviour in local affairs because of the nature of small places where everyone is close to everyone else (relative to larger bureaucracies), while on the other hand the relative scarcity of established and formal institutions in local environments is problematic (in contrast to higher level governments where some level of transparency and scrutiny is expected);

- The average costs of running a functioning public procurement system is greater in small places, so advanced capabilities will likely be scarce (for the sake of implementing, assessing, monitoring, compliance and evaluating policies and procedures) and subject to considerable scale diseconomies. Accordingly, the magnitude of red tape associated with public procurement administration might actually be relatively amplified.
in small places (Peck & Cabras, 2011), especially if localities hold insufficient influence or power to prosecute suppliers when disagreements occur and must rely on external legal institutions; and,

- As argued above, the notion of retaliation at the local scale might at first seem farfetched at the outset because of the smaller volumes of business associated with individual localities. Yet that possibility is equally significant in that context and scale – otherwise the literature claiming that public procurement is an under-utilised regional development tool would be superfluous. A crude mental exercise envisioning a straightforward system (or country) made up of two fairly similar regions (yet with different industrial advantages) characterised in the first instance by open/liberal procurement (where contracts awarded through both procurement markets are allocated in both regions based strictly on performance). If this was to be compared to a second instance featuring the same two regions where full public procurement discrimination operates (where contracts go only to suppliers located in the region procuring their services). As for most gains from trade arguments, in the second scenario the relative shares produced and awarded to suppliers in both regions would at best be identical to the former, but at worst might deteriorate significantly resulting in lesser overall activity and employment outcomes.

Of course, real-world regions are not equal or similar to each other, and some regions are more diversified and more ‘capable’ than others. In that case, a similar mental exercise would suggest that if a number of localities (or regions) with diverse endowments abruptly imposed strict procurement rules encouraging the preferring of local suppliers, the most diversified and well-resourced regions would in fact be in a better position to fill a reasonable proportion of their needs with suppliers from their respective regions, while the least diverse ones (or most remote or least endowed) would, as much as they might want to use locals, more often need to obtain goods and services from the outside. The simple point made here is that while it is often the case that the most peripheral, ‘in recession’ and/or remote regions feel tempted or under pressure to drastically discriminate, they are generally the ones that would least benefit if every region or locality acted in that same way, and must therefore seriously consider the threat of retaliation.

3. **Explicit procedures used to enforce geographical preference in the U.S.**

In reality, procurement preferencing is never absolute. American research has documented how in-state preferences have been used in various sub-national jurisdictions. It describes five types of laws or approaches that states, regions or localities have used to grant geographical preferences in the context of public procurement (Abutabenjeh, Gordon, & Mengistu, 2017; Qiao et al., 2009; Short, 1993). Irrespective of their particular goals, these laws give in-state or local bidders a distinct advantage over out-of-state or non-resident bidders in the award of public contracts.

- First, one approach is a tie-bid preference ‘law’ that gives preference to in-jurisdiction bidders only if their bids are identically priced with the other non-local bidders and they are found in all the states and local governments in the US.

- Second, a percentage preference can apply a fixed percentage of the bid price to the out-of-jurisdiction firm’s bid price; the in-jurisdiction bidder is then considered the low bid if the adjusted bid is less than the actual bid
price of the out-of-jurisdiction bidder. How these percentages are chosen, and whether they are adapted to suit specific objectives is not clear.

- Third, an absolute preference policy requires the purchasing office of the jurisdiction “to buy certain goods or services from vendors [located] within a designated area”; how they choose how to supply within the in-state bidder cohort (and those from outside the state) and how they ensure that no illicit trading takes place between them is not specified. It is likely especially at the local level that the procurement authority and its officers have considerable discretion, which opens the door to potential exploitation. Some absolute preference laws stipulate that government must buy certain goods or services within a designated area. Historically in the US, printing has been the most common “protected” commodity, followed by coal nationally. Other choices are State-specific such as lumber and paper products for New York State and milk products in South Dakota.

- Fourth, a general preference law gives a wide range of preference to serve the interest of the jurisdiction, some of which might refer to indirect supply chain attributes, such as when a preference is to be accorded on the basis of the origins of an input (worker type, raw material, etc.).

- Lastly, the reciprocal preference laws gives preference to residents whose state does not have preference laws, by adding a percentage to the out-of-jurisdiction vendors when their own jurisdiction impose preferences on the out-of-jurisdiction vendors. More than half of the states have this type of preference laws.

Abutabenjeh et al. (2017) discuss a case study of South Carolina where this small state government has implemented in-state preferences. Although there are 24 other states that implement in-state preference policies, South Carolina is particularly valuable for research because of data accessibility and the availability of detailed information about the preference mechanics and policies in the state.

> In 2009, the South Carolina General Assembly rewrote their previous policies regarding in-state preferences and provided expanded legal authority to the state government to use preference policies because it finds that it is crucial to South Carolina’s economic recovery to purchase goods manufactured and produced in the State, maintain the circulation of the funds of the citizens of this State within this State, and encourage and facilitate job development and economic growth. [...] Vendors must request that they be given an in-state preference in a solicitation process and provide documents to prove that they qualify for the preferences. South Carolina has two types of preferences: commodity contract preferences and service contract preferences. ... The percentage preference is between 2% and 7% (Abutabenjeh et al., 2017).

Within South Carolina, buy-local preferences also require local procurement officials to follow a formal and/or informal competitive bidding process to give advantage to local vendors over non-local vendors when local government authorities require bundles of products and/or services. Local governments use such policies to “play a key role in effecting an improvement in their economies and long term needs of their communities and the businesses that employ and sustain their citizenry” (Lowenstein, 2011, p. 41). Such preferences are widely used in a variety of levels of local government. For example, 35 percent of South Carolina counties and municipalities have local formal or informal preference policies. Horry County, South Carolina has declared that it uses local preference policies which “could potentially generate nearly $158 million in economic activity, creating/retaining a minimum
of 160 jobs” in the county (Lowenstein, 2011, p. 53). The city of Temecula in California also started to use local vendor preference programs in 2012 to attract Temecula businesses to bid on supplies, materials, equipment, public projects, and contractual services (Abutabenjeh et al., 2017). These are examples of claims made on the basis of [a] volumes of business that were deliberately retained in those regions, and [b] conventional economic impact calculations that consider strictly current correlations between jobs and volumes traded.

4. **Evidence**

While the variety of preference policies and reasons for applying them have been discussed by researchers, much of the literature is ultimately descriptive, even when it reports about the alleged effectiveness (whether discriminatory interventions actually determine how procurement contracts are allocated) and their usefulness (whether such redirections actually positively impact on the local economy). After an extensive survey of the literature on this key topic, Abutabenjeh et al. (2017) found that there is a lack of studies attempting to show the relationship between procurement preference policies and economic benefits – and cannot themselves conclude. While scholars for and against preference policies offer conflicting but potent arguments, these remain conjectural and so more empirical research is needed to confirm if the procurement preferential policies actually achieve their anticipated economic goals.

The 1996 study by Frank Hefner of public procurement in South Carolina sought to measure the economic impact of not applying procurement preference to a concrete pipes contract in that state, using regional Input-Output modelling. Hefner estimated how many jobs, how much earning (personal incomes), and how much income tax (individual, corporate, retail sales taxes) the state economy would lose if the preference was not implemented. This type of impact argument is used frequently and popular with politicians (and the general public) but does not entail the elements required to establish if the policy is desirable. To establish the latter would require examining [a] whether alternative policies would achieve the same result with lesser distortions and greater efficiency, [b] considering costs to the state or local government and possible corruption risks (never trivial), as well as compliance and legal costs (discussed above and also significant), [c] the future impacts of undermining open competition locally, and [d] the net impact on other localities and likely risk of reprisal.

Qiao et al. (2009) also stress the need for empirical studies of preferential procurement programs and their impact, even if their rationale is ambiguous or controversial. The National Association of State Purchasing Officials (NASPO 1999) commented that it is unacceptable that “there is no substantial body of data” to ascertain whether the gains from preferential channelling are worth the cost incurred by taxpayers, including centrally the losses due to restricted competition. They find that this absence of major empirical work surprising and contrast it to other controversial measures and policy domains. They argue that typically strong advocates for policy change usually produce major empirical studies supporting their respective positions and that similar issues can attract several U.S. federally-sponsored research reports, wondering why this is not the case with research on public procurement policies. One notable exception which was directed at disadvantaged minority groups and applied to urban areas is the Enchaughtegui, Fix, Loprest, von der Lippe, and Wisoker (1997) study which examined public procurement by collecting extensive data, and included local elements but also disadvantage preferencing – yet was not designed to consider a regional procurement context.
Studies originating from Auditor-General’s mandate in Australian states often query the value and effectiveness of various policies, including procurement procedures. One such study applicable to Aboriginal procurement is reported in chapter 7. Another Western Australian Auditor General report (2017) looking at intra-state procurement contract allocations decries the absence of data, of due process documentation, of evidence, of reliable monitoring procedures when it appraises that these would be required to ‘demonstrate whether their contracts are creating employment and sustaining business activity’. That report also shows that in the context of Western Australia’s efforts to support local opportunities for small localities in ways that provide best to State taxpayers, unexpected consequences could arise. The policy impeded Western Australia’s major companies located in Perth to compete interstate and internationally, an outcome that was not anticipated and led to both corporate strategic relocations and extensive lobbying, two significant sources of transaction costs. The authors note interestingly that while nothing prevents Western Australia from adopting such discriminatory policy when wanting to help regional economic activity at the expense of metropolitan businesses within WA itself, the same logic cannot be shifted or applied to trade across states (and territories) because ‘constitutional protections of interstate trade and some free trade agreements override it’. The Auditor-General’s report examines the implementation and adds:

> Although agencies seek to, and largely do, comply with the Policy, a lack of clarity in the Policy itself, and a lack of guidance in how to apply it in some circumstances, leads to mistakes and inconsistencies. The way the Policy determines if a business is ‘local’ is so broad that companies can qualify as local despite being geographically distant. There is little monitoring of, and no effective consequences for, companies failing to meet their local content tender commitments. This means using the Policy does not automatically ensure a positive impact for the local community (Western Australian Auditor General, 2017).

The tendency to disregard the importance of definitional matters, and ascribe the latter to being simple implementation challenges by policymakers must be recognised as a potent source of policy failure. Examples from chapters 5 to 7 will show that lack of correspondence between policy intention and operational definitions regularly undermine the legitimacy of a policy course (and its evaluability), and in some cases can make it completely meaningless. Examples from chapter 7 regarding the arbitrary and inconsistent definitions surrounding key concepts such as ‘Aboriginal’, ‘owned and/or controlled’, ‘small business’ and of ‘local’ in specific contexts or environments have ill-fated implications for the workability of specific policy objectives and open them to costly legal disputes.

Definitional vagueness also implies excessive discretion and much room for manipulation by the authorities in charge of implementing public procurement interventions aimed at supporting local businesses. Another key finding is the inadequacy of the data collected, which affects directly the feasibility of undertaking credible evaluations:

> Inadequate data monitoring and reporting means agencies cannot demonstrate the Buy Local Policy’s effectiveness. Local business and content preferences can help individual businesses win tenders. But data is not reported and collected consistently or regularly enough for reliable analysis. There is no single collection point for local content data, and the level of detail in local content reporting varies. No agency has overall
responsibility for ensuring the Policy is applied effectively, complied with, and is effective (Western Australian Auditor General, 2017).

Lastly, and by virtue of the above, ensuring compliance is almost unfeasible.

*Businesses submit their plans for local content, including local sub-contractors, in their tender submissions to improve their chances of winning contracts. However, agencies do little to hold them to these commitments beyond including them in the contracts. Respondents to our survey complained that the Policy was not enforced.*

Agencies report that contractors have varied their subcontracting arrangements after a contract has been awarded without incurring any penalty. For example, once the contract has been secured a contractor might replace a local subcontractor who was part of its winning tender submission with a cheaper non-local alternative. This may be legitimate and have no impact on delivery but it is a source of grievance for regional businesses and reduces the impact of the Policy.

*Of the contracts we reviewed, only those from Main Roads WA and the Department of Finance’s Building Management and Works business unit (BMW) had included financial penalties if a contractor ignored local content commitments. But these penalties have never been applied. Main Roads WA has been advised that it could be hard to enforce because ignoring local content would not cause it any financial damage or loss. The agency is looking at ways to address this, such as making repeated acts of bad faith affect pre-qualification for the right to tender (Western Australian Auditor General, 2017).*

The inability to produce evidence about process or outcome, the lack of attention given to monitoring and incapacity to evaluate, and the powerlessness at implementing compliance with promised actions appear to be in stark conflict with the conviction that those supporting preferential treatment in local procurement exhibit towards its feasibility, creating doubts about the intentions of localities and regions. Those inadequacies are also totally incompatible with the ‘strategic’ aspirations (Grandia & Meehan, 2017) increasingly associated local level public procurement suggesting that some even perceive it as a silver bullet capable of delivering on wider societal issues (discussed in chapter 6).

It is likely that the vagueness of public procurement objectives, vagueness regarding the definition of ‘local’, the ambiguity usually found surrounding public procurement decisions processes at the local scale, the lack of evidence about effectiveness and the limited capability of local authorities to even foresee the data requirements needed to convincingly determine the value of such policies (considering the fully array of complex economic impacts beyond their simplistic formulation of recirculation impacts) and ultimately their inability to enact compliance (as in the WA examples above) are all inter-related symptoms. These elements validate the view expressed by Grandia & Meehan (2017) that in fact public procurement lacks strategic maturity in general, is likely to be implemented by inexperienced staff and backed by inadequate institutions in smaller regions, and as a field, faces critical issues that could undermine its further development. This is notably the case when considering the investments and competencies required to demonstrate and evaluate its impact and even simply to define “success” in local contexts, an aspect that has barely been tackled by research and by practice. The inability to
enunciate the program logic of an intervention or policy is the first barrier to the development of adequate evaluation competencies, as observed by Grandia & Meehan (2017) who claim:

*Outcomes that deliver wider public benefit demand assessment beyond financial metrics and require a longer-term measurement of impact. These measures might themselves be new and innovative and will involve iterative network relationships between suppliers, service providers, public bodies, and communities. If public procurement lacks these capabilities, then its ability to reach desired outcomes in society is limited. The need to extend the evidence base of diverse public procurement contexts in delivering policy aims forms the basis of this special issue.*

When public procurement is conceived as a singular institutional form created at the nexus between complex market transactions and equally complex governmental bureaucratic processes (themselves driven by the aspiration to connect with broader societal goals and/or innovation), it becomes evident that that this has the potential to create challenges calling not for precisely designed processes, but for greater definitional and purpose clarity, coupled with a level of strategic maturity required to deal with innovation and high levels of uncertainty; unlikely to be found in regional bureaucracies (Edler & Yeow, 2016). Keulemans and Van de Walle (2017) are interested in finding out about citizens’ attitudes towards the desirability of newer types of procurement, including the use of criteria other than price for awarding tenders. Given that most prior research has exposed the restricted views of procurement officials over the desirability of using procurement to achieve alternative objectives, finding out what communities think appears a useful extension. They find that while procurement seems at first sight to be a rather abstract topic for citizens, there are indications that they actually have opinions on how procurement ought to take place, especially when connected to emotional issues such as human rights violation or awarding contracts to foreign firms when local ones appear under-utilised.

But it is not surprising that communities instinctively support local preferencing, as they embrace populist views which take for granted that contracts should be awarded to resident businesses without any questioning or understanding of the role played by capabilities, the nature and content of bids, and the reasons behind the apparent ability of foreign firms appearing capable of lodging more competitive bids than local ones. Populism and political governance are difficult to separate. The same forces are at play when officials are systematically seen buying cars from the national manufacturers (with Italian ministers driving Lancia. French driving Peugeot, Citroën and Renault, whereas one could see British ministers with Jaguars), the politics of public procurement taking into account that doing otherwise would likely result in unequivocal popular disapproval (Keulemans and Van de Walle (2017).

When advising the South Australian government about the economic contribution of its procurement activity, Deloitte Access Economics (2014) recommended that a sophisticated procurement system and methodology be developed recognizing this would present ‘*significant change and the capability across agencies [needed] to be in place to ensure success*’. They appear to suggest that building a comprehensive public procurement function on top of (or perhaps parallel to) existing bureaucratic processes would advance political control, enhance its effectiveness and perhaps its potential economic impact. They proposed that to ascertain which options would return the greatest local benefits, an elaborate range of knowledge-gathering mechanisms and activities would need to be designed which would allow procurement officials to appraise tenders on the basis of the origins of
labour and capital across their proposed technologies (in a way that is consistent with input-output methodology, and a huge data-dependent endeavour by any means). It further recognises that differing approaches would be needed for different industries due to the varying nature of supply chains.

The above suggestion appears a priori extreme, even for a state agency as it shows how much programmatic clarity would be needed if such decisions were truly handled by a bureaucratic process. If one considers how under-developed procurement capabilities in local bureaucracies are in reality (and how little progress has been achieved in propping up that function in most places in the last few decades), the Deloitte proposal appears as a call to jump to the other end of the spectrum and inflate that function to an extent that few governments could afford. At some level, claims of greater local impact do indeed require more sophisticated theoretical frameworks and tools than those currently found on government websites, but advancing that the mandate of attempting to predict impacts with such a degree of confidence is unreasonable for a number of reasons when considering the local scale:

- Deloitte first appear to idealistically hypothesize that the issues of transparency, accountability, evidence production can be resolved technically. Chapter 1 has shown that these fundamental issue cannot simply be discarded as a secondary governance issue – it is central to the effectiveness of public procurements and remains problematic in all jurisdictional scales.

- Who would deal with the burden of producing (and verifying) the data about supply chains and production mappings? Doesn’t it require vast amounts of ‘commercial in confidence’ knowledge and intentions that would remain unverifiable at best? What is the minimum scale for which such data collection could be applied? How would regions (including remote ones) with low capabilities (in terms of both capital and labour) even be able to anticipate how linkages would map out and what cost levels are reasonable?

- Would the system try to pass on part of the substantial system administration costs and the intangible transaction costs onto businesses, as they would be needed to map out their supply connections according to various scenarios linked with future government procurement intentions?

- How would compliance (and the costs of implementation) be handled if/when both SMEs and larger firms produce ‘intentions’ to use locals (as they want to show their local contributions) but inevitably discover that they must get some proportion of what they need outside those regions (as was discussed above). And would suppliers also be likely to push back and litigate when they disagree with agencies undertaking those mappings, or deciding to procure from their competitors based on misleading data?

The report’s recommendations are useful in showing the extent of the real data, mapping and verification costs that arise with attempting to produce fully elaborated knowledge systems of this type. In many ways, it demonstrates that this could lead to excessive attempt to predict and design economic requirements and processes. It helps us realise the extent of the planning risk and potential burden associated with attempting to engineer regional economies often better governed by simple rules and backed by market institutions capable of handling that complexity.

5. **Conclusion**
The scarcity of theoretical arguments and evidence (in both the academic research literature and the advocacy documentation found on the web) surrounding the value of geographical preferencing in local procurement is somewhat unexpected, given its recent popularity in national and regional policy circles. The fact is that it seems that the case has not genuinely been made that local favouritism is desirable; there are no theories, no proposed extensive logic nor evidence, other than statements (some were cited above) showing that if $X amount had not been spent in locality A or region B, those places would have been worse off by $X amount directly, and X (+%) if multiplier effects are considered according to this narrow reasoning. Not only are the impacts of the procurement policy and those of actual government spending (a big topic in economics by any means) confused, but the logic of such arguments is rarely pushed to its analytical confines when they are treated as if ‘every local economy is an island’. That is it generally does not include considerations of neighbours’ reactions, of the impact on the costs of public administration (including compliance, risks of corruption, legal disputes, etc.) as well as the perceptions of the realm and transparency of local authorities or governments which can boost local confidence and investments (quite different across national contexts).

A number of unverified hypotheses may be offered to explain that state of affairs:

- The advocacy platform is dominated by local authorities, consultants and developers of tools with perhaps vested interests in a specific view (and capable of capturing part of the rents from swaying procurement policies in some ways rather than others); which would explain the utilisation of incomplete logic and narrow definition of short-term and net benefits, as well as the absence of serious examination of evidence;

- The capture theory might well operate strongly through local businesses putting ongoing pressure on local governments to obtain local contracts, which if applying across all regions means that the overall benefits are limited, and that smaller economies are the least well-placed to benefit ultimately; and,

- It is possible that efforts to demonstrate the benefits of local procurement discrimination have occurred but not been able to show conclusively great outcomes; and may not have not been reported enthusiastically (which would have prevented them from impacting on advocacy efforts, the latter being often based on conviction rather than evidence). We did not find much interest in public procurement pertaining to the field of economic geography, despite the fact that this field has enthusiastically embraced theories of strategic advantage which remain both complex and highly debated, and vague about the nature and quality of evidence required to inform regional development policy.

It appears that the basis for the strong convictions associated with local preferencing is thin. To be sure, the drive to promote ‘buy-local’ policies (a term which we avoided using in this chapter because it has much broader reach than procurement per se) is very widespread, although inconsistently so, as vocal advocates have historically advanced similar emotional claims about impacts on future generations that neither matched the majority’s private behaviour (that is not buying local in general) and been incapable of establishing causal effects that are meaningful. If such claims remain popular in general with populist governments and possibly innocuous as slogans attempting to influence consumptions patterns, their reach into public procurement might be more worrying. As policy instruments and state interventions, critical decisions about such interventions should not be ascribed to popular opinions or beliefs, and the lack of clearly defined logic, strategic capabilities (especially at the local level)
and inadequate scrutiny is highly problematic, as the scarcity of evidence is indisputably both symptomatic and disturbing.

Beyond its simplistic and unsubstantiated nature, preferencing as an approach to public procurement must be assessed against alternative policies (to achieve the same objectives) and taking into account alternative policies (which could be affected or undermined) as well as the costs of running government institutions. A critical question arises: Are local governments ‘capable’ of shaping discriminatory policies in ways that involves learning and adjusting, based on monitoring of community preferences, with open and objective evidence-gathering processes themselves supporting the critical analysis of past mistakes and new opportunities? Do they have the requisite strategic capabilities, or the means to acquire them, maintain them or control aspects of their environments often controlled by State and Territories?

A decade ago, Ernst and Young (2008) proposed that the development of a Local Government Procurement Strategy was a necessity, stating a wide array of objectives including local value goals. The proposal followed typical strategic planning principles, endorsing the need to ‘build capability’ and examining systems and peoples within a needs-based visioning process. Consultants often present findings suggesting that problems will be fixed if their clients (agencies, governments, etc.) undertake serious planning, as if redirecting a process and extending the bureaucratic reach was an effective way to deal with excessive complexity and poor capabilities.

It would be interesting to find out what ensued after those recommendations (whether they were considered or not) and if any aspects of such a ‘plan’ were ever developed. Not only is the value and ability of an exceedingly bureaucratic system of procurement presumed, but it depends itself on capabilities outside the reach of most localities and regions. Nor can it be simply provided by externally appointed consultants ‘writing a strategy’ and leaving it for the local authorities to implement, given the diversity of stakeholders interacting in that space, and vast amounts of information and knowledge that must be reliably sorted, and involve a variety of institutions. And this might lead to arguments that a simple, transparent, fair (to suppliers and to other regions), relatively open (not too interventionist or mutable) with strong compliance systems might provide the cheapest and cleanest system, especially at the local scale. The case for comprehensive and elaborate local procurement focusing on retaining local spending is far from having been made, not only because most of the implementation costs are ignored, but because evidence that it can deliver greater outcomes has yet to be credibly produced.
Chapter 5: Supporting small enterprises through public procurement

1. Introduction

The case for using government procurement to support small and medium enterprises (SMEs) is of special interest for the current review. What makes it special is that:

- There is already, outside the public procurement domain, an extensive literature on SMEs which spans topics such as entrepreneurship, regional economic renewal, industrial growth stages, etc. Much of the interest in SMEs in general is linked with their relative importance, their rapid turnover (entry & exit rates), and their dominance in some sectors, as well as their significant contribution to employment in both urban and regional economies. Several approaches and theories found in major social and business-related disciplines exist about the merits of supporting SMEs in general, and what the impacts of doing so might be, but they are not necessarily obvious or agreed to by the majority;

- Discussions about the potential of public procurement as a policy tool to support [a] local economic activity (discussed in the previous chapter) and [b] SME sustainability or growth are often intertwined, particularly in regional or remote (non-metropolitan) contexts – because conventional SMEs are believed to employ locals at a greater rate (than large firms – an assumption verified in some industries or sectors, but not always applicable), and to source larger proportions of factors of production in their region of operation (with the same qualifications);

- In the US, the role of minority SMEs gets particular attention in policy design, and this extends to some research directed at public procurement aimed at supporting minority businesses, often framed as an anti-poverty, gender and social inclusion measure. There is in that perspective a potential overlap between preferencing on a geographical basis (chapter 4), to assist SMEs (this chapter) and to support other disadvantaged groups facing barriers to economic participation of a social or cultural nature (chapter 6). The case of Aboriginal procurement often connects all these aspects (chapter 7); and,

- There is also a quite disparate literature concerned with the contribution of SMEs to innovation (at national, regional and local scales) and the types of novelty and products SMEs are believed to have a greater ability to generate, etc.; much of which is highly debated on theoretical grounds, but often thin on evidence.

The aspects above play a role in explaining the diversity of opinions encountered in discussions relating to both the rationale for, and wisdom of, preferencing SMEs in the context of public procurement. Our scan of the relevant literature connecting public procurement with SMEs appears at the outset to be comprised of a few distinct types of research papers, some of each type having been retained for this survey and generally belonging to one of the following categories:

1. A large proportion of research simply reiterating that SMEs face distinct challenges from other larger firms, which provide examples, and usually make the claim that this warrants some form of government support, usually on equity grounds rather than any clear economic development logic or pathway. Many such research publications observe that SMEs are under-represented bidders and rare winners within the public procurement
market (discussed in greater details below). They usually claim that using public procurement to assist SME growth is warranted because other forms of support for SMEs have been of limited effectiveness. These papers mainly advocate support but do not enunciate in detail how using public procurement constitutes a policy improvement, for whom, and for how long. This type of research is based mainly on relatively uniform opinions in that sense; there is general support from commentators for supporting SMEs, but little indication of why this is in the end beneficial, to whom exactly should support go, how to assess it and how to corroborate those assertions;

2. A smaller number of commentators question the premises on which efforts to support SMEs through interventions are justified. Some have noted that hypothetical conjectures on the topic have never been evidenced or proven, and that related policy aspirations should be met with scepticism until clarified and properly demonstrated. We consider carefully the arguments put forward by those papers when they specifically question simplistic conjectures, provide evidence and/or when they consider the implications of using public procurement to support SMEs in particular;

3. Some research publications describe implementation difficulties or failures regarding the utilisation of public procurement to support SMEs, and sometimes draw lessons from those as well as speculate about their causes; and,

4. Some researchers review available evidence (often historical) on public procurement strategies and report on their effectiveness in assisting SMEs (and provide useful insights regarding the role of national contexts and major goal differences) to elucidate progress in that area.

2. The rationale for supporting SMEs with public procurement policies

In a relatively early contribution on this topic, Anglund (1999) noted that [a] it is difficult to identify the exact rationale for ‘small business aid’ or assistance programs, suspecting that [b] they mainly arise as a correction for the array of other policies that are biased in favour of big business which could not practically be overturned on political grounds. He ultimately depicts pro-SME dispositions in policy circles as reflecting the desire to offset such policy inequity. Anglund (1999) utilises the term ‘comparison effect’ to reflect the notion that in fact the reason often provided to justify intervention in this domain is the existence of so many programs and other policies favourable to big business. While this seems to reflect an early American perception and concern, it appears to have become widespread and is confirmed in our own literature review.

Rather than focusing on the design of new policy in the manner of much work on policy learning, the comparison effect deals with a class of policy dissatisfaction that triggers a search for remedial policies and influences problem definitions and the agenda. Comparisons of government treatment deserve recognition as a type of policy learning because they convey or are conducive to treatment with cultural themes and symbols that often characterize problem definitions associated with enactments. Comparisons raise equality-based standards, embedded views of deservingness, and also may tap America’s suspicion of centralized power. Government is the culprit. The losing group deserves offsetting or compensatory policy
because it is a victim of circumstances beyond its control. Equitable treatment is at stake (Anglund, 1999, p. 12)

The disconcerting irony behind the claim is clear as the remedy is to create even more policies and corrections (through procurement or not) that only endeavour to address previous inequity perceptions. From our review, it appears that such reasoning has nowadays become quite universal (SMEs are very much approached in the same way in both the European and the UK regional literatures), where the basic narrative surrounding most discussions linking the need to support SME with some ‘fairness’ principle. SMEs are both claimed to be distinct (with positive attributes and greater challenges) and yet expected to behave like larger enterprises when it is lamented that they bid and win less public procurement contracts than larger businesses do. The policy rationale appears therefore to be to counteract other policies, rather than achieve anything precise or instrumental that could be demonstrated to constitute a social or economic improvement, and thereby evaluated on logical and empirical grounds.

For our review, this observation is significant because it suggests not policies aiming either at [a] addressing market failures (the conventional approach to economic policy prescriptions) or [b] engineering regional or local growth (to support strategic competitive advantages), but instead it refers to a general response to an arbitrary equity argument that resonates with many and probably attracts populist sentiments. This is problematic for researchers or commentators expecting to corroborate the policy value through a conventional evaluation (which must entail enunciating a clear purpose, a detailed logic, gathering fitting evidence, and assessing success) of procurement activities engineered to support SMEs. Outputs can easily be defined (for instance increasing the proportion of SMEs obtaining government contracts) but no outcomes can be articulated, other than arguing that progress is done towards addressing the assumed but not demonstrated disadvantage.

Of course, the notion that SMEs face particular barriers or challenges that governments might want to eradicate has a long and respectable history outside the context of public procurement. It is therefore not surprising that those who have documented their relative absence in government procurement activity take for granted the existence of a link between the presence of those barriers (many attracting various other forms of policy assistance) and the empirical observation that SMEs are seriously under-represented in government contract markets, both as applicants and as winners.

Yet the absence of instrumental purpose only adds a further source of vagueness, particularly in light of debates about whether using public procurement constitutes a worthwhile alternative to conventional policy mechanisms, and at what potential system costs it could do so. The least to be expected from policy attempts to fashion some form of SME preferencing is that the benefits would be articulated and could be documented beyond the increase in numbers of bids made and/or won. This is justified by the abundant types of costs and non-trivial risks identified in the previous chapters (including efficiency and public value, accountability, integrity, transaction costs, retaliation risks, etc.). The demonstration of a variation in the proportion of SMEs getting government contracts is merely the confirmation of an output, far removed from the establishment of a pathway towards the creation of verifiable socio-economic benefits. It would be expected that both policymakers and researchers would consider whether the advantaged SMEs would likely become dependent on that discrimination? What would be the implications, losses or otherwise, for medium and large enterprises? And what would be the costs of coordinating the procurement system if some SMEs fail to deliver (due to lack of capacity or poor risk management) as was
suggested highly possible by small local firms in the previous chapter? Would it necessitate remedying arrangements with large firms, which could ultimately be perceived as a form of deceit? What would a program logic-based evaluation portray as the elements to be included in the net outcomes?

Some authors questioning the purpose of such policies have proposed a more deliberate and useful perspective, as they examine strictly the reasons for which lower participation of SMEs might be expected when supplying goods or services to governments. The most straightforward arguments emanating from that perspective are based on statistical comparisons (not necessarily judicious, but quite clear) demonstrating that in most domains, larger firms are more likely to bid, be pre-selected and win contracts than small firms (although given divergency in firm size and market structures, no one would expect the same proportions of small and large firms to be featured across industries and markets). They argue that if the lower participation rates of SMEs are attributed to specific barriers they encounter (which has been theorized profusely in all national contexts), then support should aim at modifying procurement procedures to remove barriers whenever they appear to disadvantage SMEs, not to advantage them without a worthy functional reason to do so.

Research has suggested categories of challenges or barriers capable of explaining lower SME participation and performance, noting their limited success even when local content procurement support is in place. It is useful to differentiate the ‘customer perspective’ (the viewpoint and limitations or perceptions of local, regional or state governments) and the ‘SME perspective’ (as in Warner 2017, p. 148) regarding the nature of those barriers:

**Customer perspective**
- Insufficient qualified local SME suppliers
- Poor knowledge of qualified SMEs in local markets
- Higher cost of local suppliers
- Safety issues with local suppliers
- Local suppliers insufficiently responsive to needs and requests from customer

**SME perspective**
- Producing reliable company and financial information
- Access to potential procurement opportunities
- Lack of technical competence
- High unit cost of operations and lack of pricing acumen
- Lack of health, safety and environment culture
- Low level of planning and performance management capability

Much of the above consist of typical factors believed to contribute towards SME competitive disadvantage irrespective of context, although some elements are more relevant to government procurement, in particular
those referring to administrative features, institutional requirements, information access, etc. While those aspects might be addressed by redesigning either public procurement rules, conditions for application, support for small enterprises, size of bids, transaction costs per bid, advertising of opportunities and technical support, etc., they can’t all be tackled by modifying the procurement system itself. There is a real risk of undermining the fairness and neutrality of the procurement process itself (which involves safeguarding transparency, efficiency and integrity) if the purpose is only to respond to an apparent imbalance for its own sake.

Some researchers have considered the possibility that SMEs themselves might not view public procurement as particularly attractive, for reasons that have little to do with perceived fairness or specific advantages believed to benefit big business. They conjecture that small firms might have different priorities (at least in terms of objectives at specific growth stages) in which government contracts might not feature significantly, depending on the industry or sector a firm belongs to. Also, firms in general in Australia ‘rate public sector contracting less favourably than private sector contracting across dimensions including profitability and sales volume’ (Flynn & Davis, 2017; Purchase, Goh, & Dooley, 2009). The reasons for SMEs’ reported difficulties and under-representation in public sector supply chains include perceptions of a lack of professionalism pertaining to the public sector itself, and the SMEs’ other times, bureaucratic tendering procedures, restrictive entry criteria for contract competitions, buyers’ preference for market incumbents, and SMEs’ own resource constraints (Clarke III & Mouratay, 2004; Loader, 2013; Nicholas & Fruhmann, 2014) (Flynn & Davis, 2017). Once again, some elements apply to any type of SME contracting, while other specifically relate to government purchasing.

Also, Flynn and Davis (2017) argue that there is no simple correspondence or likely causal response between documenting participation barriers and fixing the factors that would appear to promote participation. Some of those factors might be institutional and structural aspects that clearly block SMEs because they face greater costs (i.e. if transaction costs to participate are fixed, they present a greater proportional burden for SMEs). Any ways to address those without creating further distortions would be welcomed by most analysts. On the other hand, if the imbalance has to do with specific competencies or capabilities that SMEs are less likely to have because small firms usually have invested less in those aspects by the nature of their business (by choice, strategic or lack of capacity) it would be unwise to expend public resources to attempt nullifying those developmental stages and unavoidable priority choices. Flynn and Davis (2017, p. 338) acknowledge that we need to know more about ‘what hinders SMEs than what enables them to compete for and win business with public sector organizations’ but they fall short of asking whether dealing with government contracts is what these businesses really want, what they need or indeed what interests them given that many SMEs depend on one source of advantage, and numerous are lifestyle or purpose-driven. Within SMEs, only some types or categories seeking diversification or geographical expansion might value or seek public procurement as an additional growth strategy. In any instance, it appears that the observation that in general they participate less in public procurement is neither surprising nor meaningful for procurement policy purposes.

Adopting a capability-based approach to strategic business management, Flynn and Davis (2017) argue that two types of capabilities are needed to participate and be successful in public sector tendering that SMEs might partially lack; ‘relational capability’ (ability to communicate with, engage and influence public buyers) and ‘procedural capability’ (ability to manage the technical and formal elements of tendering and contract
administration). This is useful insofar as it can inform enterprises about the capabilities that they might already hold or are lacking, but again it does not imply that providing SMEs with those assets should be the responsibility of agencies in charge of procurement (as suggested by Flynn and Davis 2017). Some academic researchers adopting the resource-based approach to strategic management also identified barriers to SME participation in public procurement that were usually caused by their size, such as the stock of legal, administrative and IT resources at a firm’s disposal; which has been found to be correlated to their likelihood to tender (Bates, 2009; Reijonen, Tammi, & Saastamoinen, 2016). In contrast, Abdellatif and Zaky (2015) demonstrate empirically that perceptions surrounding business transparency and corruption can act as significant predictors of the percentage of public contracts awarded to various types of firms.

Relational capabilities arise from establishing relationships, creating a profile in the marketplace and influencing the specification of tenders (Flynn and Davis 2017). The average costs of those activities are all subject to their scale (to the extent that such activities require real resources, larger firms face lower average cost to relational activities), and SMEs wanting to be competitive would need to compensate their higher average costs (relative to large firms) with longer-term relationships and trust, to make entering those markets worthwhile.

Consistent with the view that SMEs face communication diseconomies, McKevitt and Davis (2013) indicate that proactive behaviour to advance governments’ knowledge of SMEs’ products and services prior to procurement undertakings is associated with superior success rates for small suppliers. As a policy response, it is often recommended that informational activities be supported by government agencies to try improving their reach towards SMEs. Agencies could attempt to convey their understanding of the determinants of success by SMES when engaging with public sector procurement, while private investments in the actual capabilities needed to effectively enter or contest the public procurement process should remain the responsibility of those suppliers.

In contrast, procedural capability denotes a firm’s ability to manage the technical and formal elements of tendering and contract administration which comprise several strands:

- Being able to identify what public buyers need from suppliers, as well as the criteria they will use to evaluate them (often extending to the appreciation of public sector priorities, or the legal and regulatory constraints under which public buyers operate, etc. – see Michaelis, McGuire, and Ferguson (2003);
- Being able to confidently demonstrate to procurement decision makers that they meet the standards and stipulations set down in the RFT;
- Being able to follow procedures when responding to RFTs; which refers to the firms’ proficiency in articulating their strengths in the written tender document (given the arm’s-length nature of the process); and,
- Being able and willing to get feedback (either written or preferably face-to-face) when unsuccessful, to understand required improvements and learn.

SMEs are known to struggle (on average) with all the above, both because of the substantial time and resources that tendering imposes (Flynn, Davis, McKeVitt, & McEvoy, 2013) and the often specialist knowledge – technical, regulatory and policy - that it demands from firms (Karjalainen & Kemppainen, 2008). And since learning is itself a resources-consuming process, growing capabilities takes time and SMEs in particular must be discerning when
choosing which competencies to strategically acquire to improve their competitive positions, as well as in which order to make these acquisitions in ways that fit their strategic priorities. If SMEs consider getting involved in public procurement markets, then those same questions apply to the wide range of capability domains pertaining to relational and procedural contracting, on top of their core capabilities. Therefore, bombarding SMEs with technical resources (with the good intention to help them get involved with government contracts) might in fact send them in undesirable directions. This would be the case if they cannot make the investments that would allow them to absorb the information in the first, place and act on it. Only those SMEs that have prepared and shaped their own strategies to acquire capabilities, enhanced their readiness to access new markets, ensure they could swiftly expand capacity, and considered new technologies that would make this possible would find themselves capable of benefiting from participation in government procurement markets.

The implications of the capabilities view are highly relevant and somewhat confirm that it is not a good idea for many SMEs to rush towards obtaining capabilities they cannot fully absorb. For instance, a government agency assessing bids would most likely establish a connection between a supplier’s apparent procedural capabilities (demonstrated in the bidding itself for public sector contracts) and its likely proficiency to properly manage a government contract given that similar competencies are needed for both. The first might become a proxy or an indicator of the supplier’s ability to fulfil its contractual obligations and deliver, a real concern for procurement agencies since it is well known that SMEs are highly vulnerable to early contract termination (see Reis and Cabral (2015). So, this is indeed an SME disadvantage which can only be addressed by further growth.

Loader (2005) provides qualitative evidence that most experts believe that lack of knowledge of the procurement process is the main factor impeding SME involvement, but this should be interpreted carefully. If indeed the ability to fulfil contracts is highly correlated to procedural capability demonstration, then removing artificially such barriers (say by providing automatic templates, electronic access, and formulas that SMEs can duplicate, providing the services of mentoring agents, and indeed reducing the actual input from the small firm) could impede the ability of government agencies or procurement services to assess the likelihood of satisfactory delivery (quality, administration, accountability, compliance, etc.) and make their decisions more challenging (resulting in more costly selection processes, or higher risk of poor performance).

Research has also produced evidence that SMEs are relatively less likely to pursue high value contracts (Flynn, McKevitt, & Davis, 2015; Office for National Statistics, 2012; Pickernell, Kay, Packham, & Miller, 2011). That literature suggests many similar explanations (generally on the basis of interviews with experts) ranging from the lesser awareness (than large firms) of available opportunities linked with public sector organizations; difficulties in satisfying more stringent qualification criteria for the more valuable contracts; and prohibitive transaction costs associated with compiling a tender for the larger bids; running parallel to the obvious possibility that contracts size might be too large on production capacity grounds (Cabras, 2011; Kidalov & Snider, 2011; Loader, 2005, 2015). But as argued above, many small and newly established firms specialise in low value market niches and grow slowly – the decision to diversify their operations and move into more lucrative mainstream markets is not only challenging, but sometimes at odds with their personal or social choices as well as lifestyle preferences (Ram & Smallbone, 2003), or because they interpret the intermittent political nature and limited sustainability of public sector markets as threats to their internal stability, which could undermine their other market transactions.
Not all policies aiming at supporting SMEs in the context of public procurement are based solely on the desire to address a statistical gap between small and large firms. Other justifications have been suggested which are somewhat controversial but provide sometimes opportunities to test claims and identify expected outcomes. One group of economic justifications for SME policies derives from the notion that awarding public procurement contracts to SMEs encourages innovation, entrepreneurship and so contributes to job creation, economic growth and can support local and regional developments to the benefit of wider society (Nicholas & Fruhmann, 2014). Indeed, there is a growing literature on public procurement and innovation which loosely connects with those arguments but goes much further in attempting to insert criteria in public procurement decisions according to the extent to which proposals are believed to make a region or locality ‘innovative’. This literature is not investigated in any detail in the current review, as it stems from the new regional economic geography and involves a wide range of theories and topics that only sometimes reaches into public procurement.

As claimed by Nicholas and Fruhmann (2014), a causal link between SMEs, innovation and economic growth has often been presumed in public procurement policy-making, despite the fact that empirical studies have differed considerably in their findings. Some research found higher growth and innovation rates in small than larger firms, while others indicate, to the contrary, that many micro and small enterprises, and particularly informal/services businesses, are not actively seeking to innovate or grow. Even for those firms that seek to grow faster by being innovative (which is a term used loosely and can be interpreted quite differently by researchers and policymakers), the effectiveness of SME policies linked with public procurement or their contributory impact on innovation is not easily demonstrated. As previously indicated, the two sequential policy objectives that can be assessed include improving SME participation in the public procurement market (while retaining healthy competition) and awarding more procurement contracts to SMEs, with a view to encouraging entrepreneurship and innovation, and ultimately job creation, economic growth and development to the benefit of wider society (Nicholas & Fruhmann, 2014). They also report that most SME-supporting policies are vague on targets or benchmarks, and that policy evaluations have been scarce, and usually made up of descriptive content, while quantitative research often resulted in low response rates and difficulties in achieving generalizability. Much of the research on pro-SME policies has focused on the wide range of measures that have been considered to strive for a more level playing field; i.e., the legal framework for public procurement includes provisions on eligibility and qualification, descriptions of contract terms and specifications, and evaluation criteria, each of which aim to affect positively and disproportionately SMEs.

Other policies considered by nations to favour SMEs entail encouraging international standards, testing and other requirements to be applied in a more user-friendly way. Among them the use of functional, output-based rather than technical, input-based specifications and the removal of price-dominated evaluation criteria (European Union, 2009; Nicholas & Fruhmann, 2014). Hence, at a practical level, some of the rules designed to ensure objectivity, clarity and transparency in specifications (the principles examined in chapter 2) can be supported by tools to improve and standardise documents and terminology, which might turn out to be the most important measures to facilitate SMEs’ ability to compete openly in governments markets.

While some progress has occurred in the above domains, the greater participation of SMEs would also likely result in increasing government monitoring and compliance costs, unless some of those burdens are passed on to the
businesses themselves (for instance if winning bids are requested to produce data and other evidence for subsequent evaluations). Again, this would impose costs that would fall disproportionally strongly on SMEs and could ultimately impede their procurement market participation. But Nicholas and Fruhmann (2014) note that given the wide range of SME objectives and unequal ability and willingness among SMEs of driving innovation and economic growth, public procurement policy should ideally mainly target those firms with the greatest potential to achieve those objectives. This is sensible when considering the fact that usually less than 10% of SMEs take-up any forms of generic assistance (not procurement related) or react to policies targeting them, possibly because SME owners are determined to retain autonomy and are suspicious towards the majority of top-down outreach programs.

A last but important strand of research considers the effectiveness of various forms of SME assistance and questions whether the motivation behind assisting them is well-founded or not. Some find that there is overall, ‘little evidence on the economic efficacy or otherwise of them (at both the aggregate and detailed levels), beyond small increases in some measures of contract awards to SMEs’ (Nicholas & Fruhmann, 2014, p. 347). The World Bank (2014) suggests that the universal belief in the need to support SMEs might be based on a widespread confusion between correlation and causation. They claim that the common observation that successful economies feature large SME sectors (the often-observed correlation) has never been supplemented by research or data indicating that SMEs have a causal impact on superior economic growth, at any scale from local to national.

Nicholas and Fruhmann (2014) extend the argument to suggest that the often-assumed relationship between SME health, job creation, economic growth and entrepreneurship is also misleading. It can either be trivial (based again on inconclusive correlations based on aggregate comparisons that are feeble) or extracted from ‘statements made at the political level without empirical justification and in some cases relying on sources that may have an interest in promoting SMEs’ (Curran, 2000; Nicholas & Fruhmann, 2014). These authors show that paper after paper cite each other without making a connection to a reliable and independent source undertaking empirical or theoretical research that is both credible and impartial. While this is not an issue strictly applying to public procurement policies, there is a growing body of research which doubts that current SME assistance policies overall result in net benefits (usually unidentified), due to their ineffectiveness and the fact that many implementation, transaction and compliance costs are overlooked; which has made some researchers claim that SMEs receive more subsidies and benefits than they merit (Curran, 2000; Gibb, 2000; Storey, 1994, 1998; Nicholas & Fruhmann, 2014).

3. **Evidence**

Without pre-judging the commonly inferred benefits of supporting SMEs for communities, Stake (2016) examines the merits of various approaches to evaluate bids insofar as they might be helpful or detrimental to smaller firms themselves. He notes the irony of the EC approach referring to a principle of ‘non-discrimination’ when supporting SMES while the purpose of policies is evidently to discriminate in their favour, the logic remaining that they participate less for reasons assumed to be repairable disadvantages. A particularly interesting EC measure linked with the bid selection rule considers the replacement of the conventional twin [a1] lowest price and [a2] reduced administrative burden through standardized documentation with [b1] ‘most economically advantageous tender’
(MEAT) and dividing procurement in more than one contract, i.e. bite size, a typical approach to address barriers such as those mentioned above. While this rule itself creates further administrative and transaction costs, it aims at encouraging SMEs to bid for sub-components and is therefore presumed to result in higher frequency of bids, and higher frequency of contract awards. Furthermore, if SMEs are more innovative (and this should be apparent when aspects other than price are considered) and the contract size barrier has been removed, the chances of success for an SME should more than proportionally increase (if the innovation is commercially sound). But as noted by Bodewes & De Jong (2003), Nooteboom (1993) and by Stake (2016), there is no scientific evidence showing that SMES innovate more than large firms (per firm or per unit of output), at best some theories have provided good ground to believe they innovate in different ways; the former being demand-driven innovation and large firms being supply-push. Stake (2016, p.1144) submits that ‘the policy recommendation to use MEAT instead of lowest price therefore rests on an unproven supposition, and it is unclear how this recommendation affects firms’ participation and probability of winning public procurement contracts’. In fact, the results do not fit the intuition (given the lack of explicit logic) of those recommending those policies:

The results show that including quality in the evaluation increases participation by large firms, while there are no significant results for micro, small or medium-sized enterprises. Additionally, small and medium-sized firms’ probability of winning decreases compared with large firms when MEAT, rather that the lowest price, is the evaluation criterion. Therefore, weighing price and quality does not appear to achieve the desired outcome, i.e., increasing the amount of contracts awarded to SMEs. Whether this is due to large firms being higher quality or submitting better bids cannot be determined from this study (Stake, 2016, p. 1145).

Therefore, weighing price and quality does not appear to achieve the desired outcome, i.e., increasing participation as well as increasing the number or amounts of contracts awarded to SMEs. Whether this is due to large firms being higher quality (in reputation of their outputs) or submitting better bids cannot be determined from the study by Stake (2016). Many analysts have proposed that E-procurement (a popular topic in the public procurement literature not covered in this review) might be a way to advantage SMEs as it reduces the bid preparation burden. But Albano, Russo, Castaldi, & Zampino (2012) investigated E-procurement as a tool for improving participation of SMEs, focusing on the marketplace for low-value direct-awards transactions and found that medium-sized firms had the highest success rate in winning public contracts, most probably because of SMEs’ capacity constraints and limited geographic footprint. Stake (2016) provides further valuable comments about the possibility that MEAT-type processes based on evaluating ‘quality’ could expose the process to significant corruption, as the procuring authority is granted more discretion when undertaking the selection process (Verdeaux, 2003). Some of the interesting observations arising from the Stake (2016) study include:

• The range of application of more complex methods (supposedly advantaging SMEs, despite having in general been shown not to) is also limited, for instance when the benefits of SME support are assumed to be justified by their innovation potential. Pickernell et al. (2011) determine that procurement systems attempting to favour ‘innovative products’ at the local government level are not sophisticated enough to promote innovative SMEs (that it recognizing them, assessing them, monitoring them). They assert that centralized (above the regional level) procurement authorities equipped with more sophisticated staff and processes would be needed to ascertain what is innovative, what likely co-investments are required, and how this could influence
the overall competitive advantage of a locality, region or economy, assuming the bureaucracies are ever effective at engineering this; and,

- From an examination of cross-sectional data, there is significant inter-industry variation in the likelihood that small or large firms be found to systematically be more or less innovative, and institutional settings are believed to play a key role in explaining innovative behaviour in some industries (where measures such as patents, IP, etc. exist) that cannot be generalized across sectors, nor be overridden by procurement policies.

In a review of the SME-procurement literature, Loader (2013) states that among the number of studies that claim to have examined SME supply to public procurers, a range of economic benefits are claimed to be associated with the use of small suppliers. These include enhanced competition in the marketplace (Federation of Small Business (FSB), 2008; Glover, 2008; O’Brien, 1993), job creation (Erridge, Fee, & McIlroy, 1998; Fee, Erridge, & Hennigan, 2002), enhanced innovation (Erridge et al., 1998; Glover, 2008), and improvements in local and regional development (Bovis, 1998; Pickernell et al., 2011; Walker & Preuss, 2008). It has also been suggested that SMEs contribute towards broader policy objectives, such as assisting minority-owned businesses (Temponi & Cui, 2008) and sustainability (Walker & Preuss, 2008). Critically, Loader (2013) notes that many of these claims tend to fall back on what has been assumed in the wider SME literature seeking support. Those arguments never provide credible quantifiable evidence linked to the effect of greater participation of SMEs in public procurement. In reviewing the evidence, she eventually reports a mixed picture in terms of the success of several SMEs gaining some contracts with the public sector over time, although their success might be due to performance improvements at the local level. But the reliability of the overall picture is limited as Loader (2013) makes a strong case for more direct evidence linking SMEs and public procurement in general. She further suggests that the paucity of trustworthy evidence seriously undermines the argument of unfair treatment itself (the central claim driving SME assistance in general) and of course the ability to determine what improvement means beyond automatic responses to incentives, and otherwise with few documented outcomes (such as growth, productivity, development). However, whilst this problem has been recognised by various authors, no agreed systematic and comprehensive outcome measurement process has been put in place which would link the key variables of interest: SME selection, productivity, delivery performance, business growth and impact on community or broader economy.

Loader (2013) concludes that across a twenty-year period, there has been only minimal improvement in the value of contracts being awarded to SMEs in the UK’s local procurement market, and much of these probably not due to specific policies or procurement methods but stemming from the wider recognition in the bureaucracy that they can offer both wider economic and social benefits to communities (as well as specific benefits to the procuring organisations) in terms of quality fit and more responsive services. While the literature is dominated by discussions relating to the barriers that are experienced by SMEs in their efforts to become suppliers and potential remedies to address those, it remains unclear why this would be desirable for those specific business and for the wider economy. While empathy towards performing SMEs is widespread, the risks of devising flawed policies (and costly administrative processes) that would advantage unproductive SMEs remains significant and rarely measured.
It is overall difficult to reach definite conclusions given the variety of positions among policymakers and researchers, and because of the scarcity of credible data, but a few additional attempts at assessing pro-SMEs public procurement approaches should be mentioned:

- Reis and Cabral (2015) assess the impact of a public procurement programme designed to encourage small and micro businesses in Brazil to take part in public procurement auctions. The programme initially resulted in SMEs participation and their odds of winning public contracts increasing (which had no deleterious effect on contracted prices, which is always a concern), so this appears as a positive result at a glance, but the authors note that SMEs were subsequently more likely to have their contracts terminated as a result of poor performance at the time of delivery. So while successful from an output viewpoint (in a typical evaluation terminology), the program produced undesirable outcomes that are not altogether surprising when a policy aims at favouring ill-equipped businesses and gives them a false sense of confidence (Reis & Cabral, 2015);

- Pickernell et al. (2011) observe that assisting SMEs is frequently proposed among the range of economic policies aimed at promoting the competitive advantage of localities or regions, and public procurement is often seen as a way for governments to assist them. They claim that in general, public procurement as a policy instrument seems unlikely to promote higher economic growth via SMEs, given that no significant link between procurement and firm growth has been documented. They also reach ambiguous conclusions regarding local public procurement as a development platform when they observe that preferencing local sources at a specific point in time and in declining regions (by controlling inputs, activity, labour, or outputs) might prevent local authorities from accessing more sophisticated procurement services and technologies that could have genuine transformative impacts on those deteriorating economies. They suggest that if procurement is to help local economic development through innovation, then increasing centralisation and sophistication of activities may be necessary (within even the local or peripheral context), which might play against perceptions regarding the interests of localities and the importance of supporting their established businesses, large and small. However, it must be noted that much local authority procurement remains unlikely to affect regional innovation and competitiveness at all, particularly at the local level where many services are technology adopters rather than drivers. The latter might be important for supporting employment and social amenities but not generators of a new skills base that can enhance competitive advantage or help retaining skilled youth in those regions.

- Loader (2018) re-examined UK public procurement policy towards SMEs and identified the policy instruments that were implemented; secondly tracked policy developments and, thirdly examined any attempts to undertake measurement and assessment of outcomes. She finds that during the period she reviewed, the government had actively and consistently pursued the policy of improving SME access to public procurement. However, she can’t reach a conclusion regarding its effectiveness due to the absence of comprehensive, systematic and quantifiable evidence. Although the aspirational target provides a ready-made quantifiable measure of output, the other case examples did not articulate identifiable targets and measurable outcomes to aid evaluation.

- Flynn and Davis (2016) examine whether procuring agencies (or public buyers) in the US have been implementing or complying with the policies aiming at supporting SMEs that originated and were recommended centrally (based on self-reported behaviour by 436 respondents). They find that few public
buyers are complying with all policy recommendations, and in fact pick and choose aspects that seem to fit their own priorities or limitations at various points in time. They note that public procurement authorities rarely act in open defiance of those directives, as most seem to be pursuing a compromise approach by adhering to some measures that suit them, but not to others. This demonstrates the potential for high levels of subjectivity and high risks of unethical behaviour. They argue that what should be of concern to all public procurement stakeholders is that the two most important measures for helping SMEs overcome barriers to tendering (as conceived in the US) – dividing contracts into lots and encouraging consortium bids – have the lowest levels of compliance among public buyers.

4. Procurement discrimination and minority SMEs

There has been substantial interest and notable literature in the United States on using public procurement to support ethnic community entrepreneurship. Much of it is associated with fringe businesses often in ‘urban’ settings, but the main motivation for procurement interventions is fundamentally the same as it attempts to reverse assumed discrimination or disadvantage through institutional preferencing embedded in procurement processes. This has long been trialled and supported in America, but evidence about effectiveness is once again incredibly rare.

Bates (2009) has been an active researcher in that field. Using detailed spending and survey data from a large local governmental authority (Chicago), he examines the impact of preferential procurement policies on minority business enterprises (MBEs) selling to government clients. He observes that preferential procurement policies often miss their objectives, achieving perverse outcomes such as minimal assistance to MBEs and negligible local economic development impacts.

Objectives such as fundamental fairness and a level playing field lack empirical underpinnings and function, in practice, as slogans. Evidence from past studies of government procurement document discriminatory practices handicapping MBEs, but these studies have paid less attention to examining causal links between possible remedies and the objectives of preferential procurement programs (Bates, 2006a; Bates & Howell, 1998; Blanchflower, Levine, & Zimmerman, 2003; Boston, 1999). (in Bates, 2009, p.180)

Bates’ own survey states that the same sorts of barriers apply to minority SMEs as they do to SMEs in general:

.... discriminatory barriers retarding minority business performance is widely discussed in the scholarly literature (Bates, 1997, 2001, 2006a; Bates & Howell, 1998; Blanchflower et al., 2003; Boston, 1999; Cavalluzzo & Wolken, 2005; Fairlie & Robb, 2008; Waldinger & Bailey, 1991). Applicable barriers limit access to financial capital and product markets; access to skills and work experience that facilitate firm formation are sometimes limited. These barriers handicap MBEs in multiple ways. Barriers often result in overly small and less viable firms, compared with those owned by non-minorities. The greater incidence of marginal firms, in turn, causes heightened failure rates. Barriers, finally, discourage some potential minority entrepreneurs from ever taking the plunge into self-employment. All these manifestations of discriminatory barriers—stunted firms, heightened failure rates, and discouraged businesses—are found in the universe of

But Bates also argues that conventional minority-SME assistance programs have also been ineffective (largely attempting to deal with access to credit) and have not helped those businesses getting larger government contract market shares or improving their survival rates. In the construction industry for instance, minority SMEs often enter into government procurement as subcontractors on large projects, operate by interacting with hostile prime contractors, face difficulties in obtaining adequate bonding and insurance (a well-established barrier to SMEs) and ultimately have to deal with slow payment of invoices by both large contractors and the government agencies overseeing the contracts (Bates, 1997). Bates (2009) argues that for otherwise successful minority SMEs, public contracts can be a trap that makes their overall economic sustainability even more precarious. The application of public discrimination can also be detrimental when it disqualifies the stronger minority-owned firms from preferential procurement program participation, inadvertently or not:

Whenever government assistance flows to higher-income, better-educated entrepreneurs, an objection invariably arises: Why help those who are already successful (Bates, 1995)? The response is straightforward: It is the viable firms that are most apt to generate economic development and create jobs (Bates, 2006b; Boston & Ross, 1997). Viable firms most often complete their procurement contracts successfully. The alternative of assisting weak firms often leads to mass business failure (Bates, 2003). If government assistance genuinely seeks to create strong firms capable of generating jobs for underemployed minorities, it must be targeted to entrepreneurs possessing the resources and skills that allow them to build viable businesses. Most of these entrepreneurs will be well-educated, appropriately experienced, and possess above-average incomes (Bates, 2009).

There are inherent contradictions arising from this type of blind application of discriminatory procurement, which are highly relevant to Aboriginal procurement in Australia, as recently tentatively conceived (see chapter 7). Either the policy will focus on [a] genuinely disadvantaged SMEs fitting a specific category (which must be defined, i.e. ‘Aboriginal owned’) and which are more likely to fail in some regions because of the size, lack of expertise, lack of experience and lesser access to a number of required capabilities, including institutional recognition or on [b] those minority businesses (small or large) with the necessary capabilities and entrepreneurial drive capable of demonstrating that they are likely to deliver, employ others (from their minority group or not, depending on the capabilities needed) and will further grow, and yet might understandably be seen as viable (having reached the level playing field) without any such support.

In the US context, Bates (2006b) and Bates & Bradford (2008) claim that the evidence is strong that focusing on the most promising SMEs makes practical sense and that among firms owned nationwide by minorities generally (and African Americans and Latinos specifically), the high-end firms create most of the jobs, have been growing more rapidly in size and scope in recent decades, as well as relative to other small businesses (Bates, 2006b). Whether those successful firms still face unfair barriers is a difficult question because some of these barriers are rooted in prime contractor–subcontractor relationships and do not necessarily constitute a minority issue. Also, some of these become indirectly under the control of the procurement staff working in government agencies, which might or might not be an improvement for minority business autonomy. It appears reasonable to assume as Bates (2009)
does, that as relative newcomers, minority SMEs seeking public sector procurement contracts face, as outsiders, entrenched networks in construction (clearly a minority issue) as well as problems of SME firm size; credit constraints, and low bonding capacity which apply to non-minority entrepreneurs.

Restricted market access interacts with low capitalization, lessening firm size and scope, often resulting in small firms lacking the capacity to compete for large contracts that typify most public-sector procurement opportunities. In thinking of barrier alleviation, furthermore, it is essential to consider not only the existing vendors but also the potential vendor that would do business with the government clients in an environment of reduced barriers (Bates, 2009).

Bates further analyses many sources of barriers and suggests that a range of policies are needed to address them systematically, including monitoring and perhaps intervening when prime and subcontractors are involved in conflicts. His logic is consistent, but the costs of such involvement (falling on the communities, governments, the services' beneficiaries or consumers they represent and/or taxpayers), the competencies within the public authority and the high potential for corruption (involving or not the government authority) proportional to that complexity, and which increases considerably as such mediator roles multiply. These implications should be carefully included in the analysis; incorporating a calculation of net benefits and costs (and risks) from increasing government involvement and potentially dependency or even corruption. For the longer run, some conceptual indicators and data of what constitutes a level playing field and when minority businesses need to contribute back to the economy, rather than be supported, is needed.

One type of fraudulent behaviour which is difficult to stamp down because often unavoidable (because it is immoral process-wise but not illegal as a strategic business move) is the creation of front companies. These commonly identified occurrences are likely to be small, opportunistic businesses created for the duration of a project or contract; which involve at least one minority member in some capacity that allows to satisfy procurement requirements and qualify for assistance or improving their chances of success. They are also problematically distorting any evidence as their disappearance does not necessarily indicate failure. Bates and Williams (2001) observe that many minority SMEs appear and disappear along major construction projects, many eventually are terminated because of capacity issues, or are dissolved because incapable of dealing with a genuine private-sector clientele, having relied heavily on sales to government or a specific lengthy project.

5. Conclusion

The examples above were dominated by research from Europe and the US, although many authors mention Australia in their lists of countries that have long adopted policies aiming to support SMEs, and some note that States and Commonwealth have recently extended their support to government procurement incentives. Our review did not include much Australian content because we encountered few that attempted to evaluate the procurement policies (as enacted) or any examination of the historical evidence connected with procurement regulations associated with specific Australian jurisdictions. Policies themselves express intentions and don’t tell us that much about the reality of their implementation, the nature of the conceived or intended improvements, let
alone their effectiveness, and are suspected to evolve considerably as governments come and go. An example is the NSW Government Procurement: Small and Medium Enterprises Policy Framework (NSW Government, 2013) which mixes policy objectives as vague as they are liable to clash with each other:

- Recognizing local industry capability and enhancing industry competitiveness;
- Giving SMEs greater opportunities to access government goods and services procurement and compete on a value for money basis; and,
- Making doing business with government simpler, easier and more attractive.

As well as supporting the following principles:

- Ensuring open and transparent process for business to engage with government
- Supporting competition and innovation
- Creating full and fair access to all business
- Supporting probity and equity in all its procurements
- Ensuring value for money (including whole of life costs)
- Ensuring the policy is consistent with international treaty obligations, including international free trade agreements.

The above is simply an ad hoc list of wishes, which constitutes a telling example of why research and evaluations cannot proceed on such nebulous policy intent statements, and that the gap between principles and implementation needs to be seriously examined and better understood. Attempting to retrace the program logic on the basis of such assertions would be both testing and significantly subjective. The list above seems to include all the possible objectives a government might want to enact at various points in time and becomes a basket case of possible policy goals left to the discretion of the procurement agency to rank. This once again takes us away from any clarity about where the ‘public interest’ might lie and raises the particularly problematic prospects of subjectivity and corruption around procurement functions. Both transparency and clarity of objectives need to be firmly established prior to bid selection and decisions.

Finally, there are good reasons to believe that the various types of objectives (such as supporting SMEs, supporting minorities, supporting environmental purposes, supporting innovation, supporting local content, etc.) that might be pursued by public procurement policies might crowd out each other. Clarke III and Moutray (2004) argue that in the US, the federal government in some years exceeded its small business contracting goal in various areas where public spending occurs (that is reached over those targets), but not in the federal procurement market. The crucial point they make is that the former came at the cost of other procurement objectives; and that ‘federal agencies have, for instance, not met their goals for women, minorities, or veterans, and contract bundling, and purchase cards may restrict small business opportunities’ in the future, while judicial actions are on the rise and the number of acquisition workers are reduced. So, the lack of objective clarity is likely to result in objective overlap and clashes, and the danger that this could lead to policy direction conflicts, arbitrary choices and higher chances of corruption becomes significant.
Chapter 6: Addressing social disadvantages with public procurement

1. Introduction

The idea of using public procurement policy or interventions to address various social disadvantages is not altogether new, but it has recently received widespread interest, and in some jurisdictions has become a significant political undertaking. The term ‘social procurement’ is sometimes used to describe public procurement aimed at addressing specific disadvantages (gender inequalities in employment, labour market dysfunctions or barriers, specific minorities economic participation, etc.) which is what this chapter emphasizes. But it also can be quite differently interpreted, for instance by NGOs and social enterprise advocates, to refer to generic activities with a ‘social’ emphasis and which involve subcontracting, and those important distinctions will be explored further below. The aspects of ‘social procurement’ of interest to this review are based on a logic comparable to that applying to SMEs in the previous chapter. They refer to the inclusion of supplementary objectives along the process of supplying goods and services that the government is procuring, possibly with no connection to the initial objective. In the current chapter we look at attempts to link government procurement (of a primary good, service or project for which it has a spending mandate) with subsidiary (or secondary) objectives to correct historical or institutional barriers which have disadvantaged certain groups (usually confirmed by statistical evidence of enduring inequality) by intervening through ‘positive discrimination’ policy responses.

But it remains that the expression ‘social procurement’ is often used to refer to the activities of any organisation with community-based missions or social objectives (sometimes to present it as a sector with wide-ranging services provided to communities and seek support), and many NGOs undertake advocacy purposefully blending those domains, including activities which are subsidized by governments and some not. From a literature review angle, it is often difficult to distinguish research and advocacy documents that are pertinent, the only immediate criterion being the extent to which their scope is clearly defined, and the existence of evidence on their activities. One reference reviewed below addresses that question explicitly and provides a useful typology to show that ‘social procurement’ as understood in the public domain is often broader in coverage and of unequal relevance to the topic of public procurement addressing social disadvantages, as we have entitled this chapter. An example of activity that is not considered in this review but for which there is a substantial literature is that of ‘social enterprises’ which can be intertwined with social procurement and often make claims about its economic value and the support it deserves on grounds which are different from what will be examined below.

Nowadays any search on ‘social procurement’ returns large numbers of entries, especially resources and documents on the web best classified as grey literature. The vast majority of those consist of advocacy papers by organisations (NGOs, fair trader networks, activists backing specific causes, etc.) with various objectives, generally [a] convincing readers about the merits of their cause, [b] describing their activities in various parts of the world (presented as examples or as outcomes) and [c] providing some recipes describing ‘how to’ help the disadvantaged, advice aimed either at other similar organisations or at governments and possible investors. These do not entail much in terms of theoretical frameworks or credible evidence that this review is interested in.
There is a more recent but growing academic literature, much of which describes the growth of that field, the reasons it has emerged, the barriers it is trying to overcome. It is worth noting that the EU uses the term ‘social procurement’, but that US experts have not done so to the same extent until very recently, and despite the fact that they’ve already had significant policies targeting minority or gender disadvantages or barriers. For these reasons, the current chapter is more fragmented and displays less theoretical depth (let alone reliable attempts at evaluation and the use of objective evidence) than the previous ones, although some valuable contributions are particularly pertinent.

2. The rationale for supporting disadvantaged groups

The European Community, jointly with the OECD, introduce the topic of ‘social considerations’ into public procurement by first describing what they mean (SIGMA 2011):

What are social considerations?
There is no fixed definition of what a social consideration is. The concept is most easily understood by way of examples. Examples of social considerations:

- Reducing unemployment
- Preventing the use of child labour
- Preventing discrimination on the grounds of race, religion, disability, sex or sexual orientation
- Encouraging good employment practice
- Reducing local unemployment
- Reducing social exclusion
- Promoting training opportunities for the young or disadvantaged
- Encouraging access to work for people with disabilities

Contracting authorities have often used (or sometimes proposed to use) public procurement to further these types of broader policy objectives in ways that are relevant to this review. Some of the ways in which contracting authorities try to incorporate social considerations into procurement processes (including some of the examples above) are not legally permitted under the EU acquis (the legislation, legal acts, and court decisions which constitute the accumulated body of European Union law) or require explicit exceptions (permitted when certain conditions are met). Some types are specifically permitted in the Directive. In practical terms within the EU, the key questions from a procurement perspective are:

(1) Is it legally permitted under the EU acquis to incorporate social considerations into the procurement process? ; and,

(2) If it is legally permitted to do so, when and how can this be done?

Even in the context of EU’s significant documentation, the answers are not straightforward and sometimes there is a conflict between general policy and what is achievable under the EU acquis. When considering the incorporation of social considerations in the EU, it is always necessary to consider whether the proposed approach complies with
the fundamental Treaty principles where primary good procurement governance principles overshadow others, even when specific provisions permit social aspects to be considered (SIGMA, 2011).

The above is valuable as a reminder that there are well-established reasons to not interfere with effective procurement coordination by bringing further, social objectives, which might become detrimental to other principles of good management public procurement and clash with both efficiency and accountability (including minimal corruption) goals. From the examples the EC provides, it does appear there are three main types of social consideration formulations that have arisen on a regular basis:

1. Reversing discrimination related to economic participation and employment (already discussed above and in previous chapter in the US context of ‘minorities’);
2. Supporting existing social and economic policies and improving institutions (training, employment programs, etc) usually linked with discriminated groups; and,
3. Opposing specific practices (elsewhere and outside the direct reach of legal institutions) that might be indirectly tackled through procurement (i.e. child labour);

When occasionally included, the EU directives about social considerations craft and specify carefully what provisions allow for, under which specific conditions of time, place and purpose (i.e. economic participation for people with disabilities, sheltered employment, etc.), as well as precise process requirements applying to each of the phases of procurement (preparation, advertising – contract notice, selection - exclusion and selection of suitable tenderers, tender evaluation, contract conditions, restrictions, contract management) with the view to maintain some meaningful level of transparency and accountability even when creating exceptions.

McCrudden (2004, p. 257) has been a consistent exponent arguing that ‘the use of public procurement to achieve social outcomes is widespread’, but that ‘detailed information about how it operates is often sketchy and difficult to find’. He documents the fact that in Europe and in the US since the 19th century, government contracting has been used as a tool of social regulation which preceded the more recent geographical discrimination focus. He has documented earlier motives such as providing employment opportunities for disabled workers, and later, after the Second World War, to address racial equality (through set-asides for minority businesses as discussed in the previous chapter). Subsequently, promoting equality on the basis of ethnicity and gender, human rights, etc. have become transnationally embraced concepts.

McCrudden refers to ‘linkages’ (rather than conditionality) to describe the context in which public procurement selection processes give preference to suppliers capable of ‘linking’ the ability to address selected social goals or objectives while producing the necessary (primary) good or services. Such linking has historically been significant and diverse in the U.S.:

A 1998 survey by the National Association of State Procurement Official (National Association of State Purchasing Officials (NASPO 1999) found the following:
- 27 states have product preferences, and 25 states apply product preferences to commodities;
- 12 states have price preference or set-asides for women-owned businesses;
- 18 states give price preferences and set-asides to minority-owned businesses;
- 20 states give preference and set-asides to work centres;
- 28 states give preference and set-asides to the prison industry;
- 12 states have preference treatment for small businesses;
- 27 states have certification programs for minority-owned business;
- 18 states have policies, procedures, or laws to assist in balancing the competing interests of preferred sources (products by the blind and handicapped and correctional industries) versus resident, small, minority, and women-owned firms; and
- 15 have “Buy American” laws (Qiao, Thai, & Cummings, 2009).

The above attests to a considerable diversity of priorities although no research could be found that explains how such priorities might have come into being. It further begs the question of whether governments simply respond subjectively to pressures from diverse interest groups in different locations at different times (an objectionable practice disconnected from the public interest), or whether they really have the capability to ascertain that this or another disadvantage is more significant than another and should be addressed. From the account of many commentators and the absence of data or comparative analysis, it appears as if the articulation of social procurement ideals (and even their implementation) very much preceded the elaboration of theories describing their rationale. Little can be found in both the grey and the academic literatures about what exact policy problems procurement would solve, how objectives would be articulated and addressed, whether the actions taken would cost-effectively bring about credible transformations (including the possibility that some of them could in fact be deleterious), whether and when those social goals could be resolved directly (without calling on procurement channels) and ultimately whether those approaches are truly worthwhile.

The need for such research is particularly apparent in publications explicitly showing social procurement as driven by communities of activists and NGOs, sometimes from the legal profession and from social movements campaigning for aspects of global social justice (the ‘fair trade’ ideal for instance is widespread and links the social with the environmental) and setting themselves in opposition with contemporary economic and political systems, especially against so-called ‘corporate power’ (McDonald & Marshall, 2010). Not only are the objectives not emanating in any sense from community aspirations, but in fact procurement appears to be chosen so as to avoid majority views.

Among those activists who want to transform capitalism, the least radicals admit that they face the need to construct an alternative with a convincing narrative which they have not achieved. They lack ‘clarity around foundational theoretical questions regarding the divisions of social and political responsibility between national governments and international institutions, and between public and private actors’ (McDonald & Marshall, 2010). So, while much of the impetus behind addressing social disadvantages with public procurement stems from the desire for positive change by social actors pursuing agendas they believe in, they suggest extending procurement towards numerous ultimate motives, which appears to hijack a key socio-economic institution meant to deliver goods and services for the public benefit following strict principles of transparency and accountability.

It is therefore critical to raise the question of whether public procurement is the appropriate channel to assist some of these efforts to ‘change things’ when the objectives are clearly set to oppose majority views, whilst using
an imperfectly understood institutional channel designed to deal with altogether different policy priorities. Such a reflection is particularly needed when some commentators involved in social procurement aim for more than superficially transformative ambitions, and pursue radical changes to modify social, economic and political institutions (albeit rarely articulated with clarity) that governments themselves could not really support given the nature of their own mandates:

Such goals are fundamentally concerned with countering the perceived tendency towards the production of inequality and the commodification of labour relations associated with capitalist dynamics of accumulation. Some [...] broadly accept the benefits of capitalism and are committed to working within the terms of the system. They aim at ‘tweaking’ it so as to share its benefits and promote more collaborative relations. Others seek a deeper transformation which would challenge the terms of the system in a number of ways (McDonald & Marshall, 2010).

Worryingly, many authors (researchers or advocates) view ‘social public procurement’ as such a channel ‘evolving through an ongoing process of experimentation and adaptation’ (McDonald & Marshall, 2010) when suggesting that NGOs (as non-state and non-industry actors) be enlisted to deliver services while at the same time pursuing radical change agendas, according to their beliefs. A scan of the grey literatures shows that the social procurement field has not settled on any ultimate purpose nor managed to develop convincing tools to ascertain what works and what doesn’t. Proponents of the social procurement approach are more at ease with expressing their views about wanting society or communities to change than, as they concede, being familiar with program delivery. They claim that much additional research is needed ‘to assess preference programs’ policies, procedures, benefits, and costs, including appraising the following:

- Gains, if there are any, for the preferential businesses is worth the cost incurred by taxpayers, including the losses due to restricted competition,
- Success rates and benefits achieved by specific preference programs,
- Costs to administer preference programs,
- Measurement issues (which measures or indicators have validity), and
- Alternative approaches such as whether alternatives to set-asides or price preferences like education/training, mentor/protégé programs, or use of Small Business Administration programs and tools are more effective, etc.’ (McDonald & Marshall, 2010).

It is conceptually difficult to undertake sensible measurements of what changes are needed in given social and economic environments when the purpose is not to improve existing institutions, but to radically transform them, whether the community or society that is to be changed agrees or even is informed about such intent. Aspirations to experiment and to facilitate adaption within evolving social systems need to be framed around mechanisms and anticipated end points; in a way that could allow policymakers (and the public) to differentiate good ideas from bad ones, as well as distinguish effective pathways from undesirable ones. If existing and purposeful institutions such as the procurement system are to be used for widening social or political agendas, it is necessary to establish what works and what doesn’t through clear statements of logic and evidence, as is usually incorporated in basic evaluation strategies. This appears incompatible with the sentiments proffered by those seeking to replace current...
social, economic and political systems, without proposing a clear alternative, or seeking a transparent mandate to use public funds to pursue such goals. This raises issues of legitimacy:

Indeed, it has been argued that an important criterion of effectiveness in any regulatory regime is its legitimacy, in the sense that it is ‘worthy of public support’ (Baldwin & Cave, 1999) in (McDonald & Marshall, 2010). [...] the legitimacy and therefore the effectiveness of any government policy will be influenced by the quality of public deliberation and participation by various stakeholders when determining regulatory objectives and the mechanisms for achieving those objectives (Vincent-Jones, 2006, pp. 107-109) in (McDonald & Marshall, 2010).

We reiterate that the issues raised here are critical at a political level, and apply at all scales of government, as they raise the question: Is public procurement (and the social procurement variety in particular) being used in a way that is legitimate in the sense of motivated by intentions purposefully articulated, communicated and supported by understood objectives, so as to be ‘worthy of public support’? This is of interest for local and regional governments as well:

1. Is public procurement an appropriate channel to experiment with social policies that have (presumably) not been satisfactorily resolved when addressed through conventional government social policy channels (direct spending)?

2. Is it legitimate to use public procurement to pursue very diverse, and often discrete social agendas that have not been vetted directly by the electoral process? This appears to give specific social agents excessive discretion (in an opaque institutional environment when procurement is not transparent) to define, select, aim, and use public funds in relatively indefinite ways? And,

3. Given the two concerns expressed above, what are the chances that aspirations and target outcomes be defined, evidence be assembled objectively, and objective evaluations occur that will pave the way to better practices in the future?

3. **Theoretical developments relating to public procurement addressing social goals**

This section simply overviews selected contributions that have attempted to frame the logic of using public procurement to address social disadvantages in ways that might offer clues as to whether this is a good idea, or indeed feasible; what evidence would be needed to test effectiveness, and what outcomes might be expected. The academic research contributions consulted ranged from the highly speculative to some more careful attempts to frame how specific interventions and mechanisms could be anticipated to produce specific outcomes, as in a theory of change approach to describing a program’s logic.

While this review does not dwell into the fairly sizeable work on the use of public procurement to combat poverty and support aid agendas pertaining to Less Developed Countries (LDCs), a few contributions examining interventions embedding pro-poor objectives provide useful hints about the issues that needed considering in that context, with some particularly pertinent to the local scale.
As observed generally in related domains, public procurement is viewed as an opportunity ‘depending upon how it is structured and conducted, [that] can be used as an instrument of government policy to facilitate social and economic development’ (Watermeyer, 2002, p. 210). Yet the mechanisms for development sometimes appear to refer mainly to the conventional themes discussed in previous chapters such as ‘buy-local’ and encouraging ‘local value’, or ‘supporting the development of small enterprises’, or ‘green purchasing policies’, which eventually can incorporate aspects of ‘poverty reduction’, the latter often just added to a list of stereotypical ideals but not really further defined in a way that can be used to drive meaningful interventions and assess their achievability. Rogerson (2004) for instance makes reference to a disparate collection of arguments that do not amount to a theory or logic and include fragments such as ‘allowing money to circulate locally’ (back to geographically focused spending), ‘building social capital’ (never defined and notorious for its operational vagueness), ‘stimulus for local enterprise’ (back to SMEs). The claim that selective procurement principles ‘can produce significant impacts’ allows the author to undertake a description of new initiatives undertaken in post-apartheid South Africa deemed to address poverty without providing any further explanation, nor a single source of evidence.

The example above only indicates the tone of much of that literature where the confidence of researchers about the worth of the policies they support must be contrasted with the quasi-total absence of evidence or critical assessment. It often appears as if there is a belief that procurement institutions and bureaucracies can achieve poverty reduction, social development, green transformations by naming those objectives, despite the fact that such agendas have eluded government programs, NGOs and other well-meaning organisations backed by huge spending efforts simply because of declared intentions supported by a profit motive. Amidst such great claims of progress, Rogerson (2004) eventually concurs with Watermeyer (2000) that ‘[t]here has in fact been limited research on and a lack of data regarding most programmes to demonstrate the effectiveness of the use of procurement as an instrument of social policy’. But that does not prevent him to further conclude nevertheless that ‘South Africa’s new and innovative programme for public procurement can be applied to address the core objectives for local economic development, not least those concerning the imperative for pro-poor interventions that deal with the pressing imperatives of poverty alleviation’. Our review encountered a staggering number of such claims in papers related to the potential of social procurement even within academic research sources. Even research appearing to superficially consist of ‘reviews’ of initiatives or programs usually ends up advocating the sentiments or intent of those programs, and in the majority of cases cannot provide coherent theories of change (social and/or economic), let alone credible evidence.

In an advocacy paper produced for a ‘social trading’ enterprise, social scientists Burkett and McNeill (2017) do raise the useful and fundamental question of what is ‘value’ in social procurement and how can ‘impact’ be measured in that context. They observe that social procurement has grown and developed significantly in Australia (especially in the State of Victoria) over the past decade and that increasing references and practice have raised the ‘interest in determining whether social value can be incorporated into or sit alongside broader assessments of ‘value of money’, and if so how this can be done in ways that support integrity in how social outcomes are achieved and that are cost-effective for all parties involved’ (Burkett & McNeill, 2017, p. 4). Such statements surely confirm that practice has clearly preceded any assessment of value, or even of reflection about how value would be articulated across realms (social, economic or otherwise) and whether the such uses of procurement are sensible. This appears
typical of advocacy positions generally motivated by ideological positioning rather than reflecting representative community ambitions, irrespective of whether they are widely shared or not.

The dichotomy between social value (never defined as such) and other instrumental values is perhaps also creating a self-serving narrative separation; where some things are valued through individual preferences (for which economics has built models) being opposed to somewhat pre-eminent intrinsic values associated with ‘the social’ according to their advocates. Such age-old philosophical questions deserve deeper reflection but, in the current context of government agendas and the legitimacy of using procurement agendas for secondary purposes, it confirms that many social procurement advocates see the ‘social’ realm as somehow transcending other values and above requiring the justifications and assessments that good governance would require. While we simply inferred the attitudes above from the logic and comments extracted from the most explicit and worthwhile research sources, documents and reports we could find around the topic, these seem to be broadly consistent with the explanations or excuses proffered when explaining why the field of social procurement has not been able to produce credible measures and outcomes. Many appear to suggest that pure ‘social goals’ cannot be contrasted with, or assessed against other more ‘common purposes’. Researchers addressing the question ultimately describe divergent positions regarding methodology arising from within their field stating that:

> Some conflate social value with social outcome measurement and argue that only extensive and often expensive measurement methods are appropriate for assessing social value. Others suggest that social value is inherently nebulous, and we therefore should not attempt to confine it. Whilst others argue that social value is implicitly achieved through engaging certain types of suppliers (Burkett & McNeill, 2017, p. 4).

These authors eventually blame scientific methods themselves when they assert that ‘many of the assumptions about demonstrating social value are limiting the development of breadth and depth in the market for social procurement approaches to delivering on socio-economic objectives’ (Burkett & McNeill, 2017, p. 4). This stance amounts to a feeble excuse for not entering the challenging and indispensable work required to define, articulate, instrumentalise, conceptualize properly and try to ‘value’ decisions regarding the use of public funding, rather than taking the ideological position that the social domain is unassailable and constitutes a purpose in itself. Importantly, it also suggests a potential disregard toward scrutinizing how public funds are being used, when the approval of those they are supposed to benefit is sidestepped. This raises critical questions about accountability, and all the risks that come with it. Public policy firstly requires that public support can be given on the principle pursued which involves ex ante ensuring a minimal degree of clarity, of legitimacy and the possibility to openly contrast the use of public funds against alternative uses or values. Secondly it must ensure that ex post accountability assessment is achievable and can be planned for. It is essential that post-implementation evaluation be conducted to establish whether specific outcomes were reached and justified the costs associated with meddling with the procurement process (noting that very few so-called evaluations go beyond the statement of ‘what could have been done better’ narratives).

Admitting defeat on their initial ambition of evaluating some social procurement programs and conducting a fully-fledged cost-benefit analysis (an ambitious target indeed), Burkett & McNeill (2017) instead take a different direction that involves neither demonstrating impacts, nor attributing causes to effects or even collecting hard
evidence. They propose rather to present a ‘social value handprint’ (bundling many types of benefit across the social, environmental and economic realms) to demonstrate figuratively to a non-expert audience what the social benefits of various projects ‘might be’. While they claim having applied this to a number of case studies, that it uses small amounts of data or public resources and constitutes a more ‘pragmatic’ approach (although they explicitly admit that it does not constitute a proof of anything in particular), this constitutes a shift in both audience and purpose. While that type of image-based mapping exercise is far from new as a communication exercise, it alters the nature of their contribution from that of research-based learning (which requires relatively strict rules to adhere to, and objective critical data and analysis) and returns to an advocacy platform (offering elementary representations of benefits that stakeholders might experience and possibly might be able to express through feedback).

Given the warnings articulated in previous chapters about the recurrent tendency of subjectively held beliefs about ‘what is good for a community’ to find their way in procurement processes (particularly when a framework of social values has never been specified prior to the initiative, objective and independent evidence has not been collected and when those conducting the assessment study have a deliberate advocacy mandate), this is not what would pass as a valid appraisal. Yet the authors surprisingly claim that social value by their approach ‘can be transparently and appropriately demonstrated without significant investment into specialist research or measurement methodologies’, and that this constitutes a more strategic outlook than either what has existed prior or what evaluators would expect as credible evidence.

In another philosophical twist in this short but useful report, Burkett & McNeill (2017) discuss the issue of defining social value and use fairly conventional concepts, proposing a list of disaggregated benefits (in contrast to the handprint idea) and making the following points:

- that the analysis should focus only on the additional benefits achieved from the procurement process (very similar to applied cost-benefit analysis when considering net opportunity costs); and,

- that it is necessary to order those benefits as some are more important than others. While they are vague about whose ranking is legitimate, this way of organizing preferences is very much similar to economists’ elaborate schemes to aggregate utility and rank options. The authors even state that ‘determining social value involves not just an assessment of what outcomes can or could be achieved (and therefore what the benefits of the process are), but also suggests that more subjective decisions need to be made about what is valued [which...] includes considering to what extent one benefit is valued in relation to other potential benefits’ (Burkett & McNeill, 2017, p. 5).

The comments above refer to inter-personal subjectivity, to the need to weigh competing demands or values, and the existence of trade-offs between competing values, in ways that are undoubtedly similar to conventional economic theory based on methodological individualism (and many neoclassical practitioners would say what economics is ultimately about). Yet Burkett & McNeill perplexingly use these arguments to contend that too much attention is in the end given to measuring social outcomes, and that subjectivity implies that this is not warranted:

In much of the research and literature about social value the focus is on articulating frameworks for measuring social outcomes. While at a basic level this seems reasonable, as suggested above social value is a subjective
concept and therefore how it is conceived and how measurement is approached will differ according to who is in the discussion (Burkett & McNeill, 2017, p. 7).

They eventually appear to indicate that experts ‘in the discussion’ would know best what is good for the community or know what the community wants. Both these assertions are very problematic. It is difficult to state whether these authors are confusing various types of subjectivity, and perhaps claim that too much fuss and too many resources are used to ascertain what the values of a community might be, and whether programs or policies are effective in moving a society or an economy in the direction desired. It is unclear whether the arguments about ‘subjectivity’ refers to the subjective preferences of community members (a fact of life), of governments (who perhaps monitor those to ascertain whether corrections are required, but imperfectly), of those who contribute and make ‘funding’ decisions, of researchers modelling public values or of advocates promoting them and supporting social procurement, etc.

The difficulties surrounding complex evaluations in contemporary social and economic contexts are well-known (regardless of the procurement context), in particular the ability to demonstrate that specific actions can be corroborated through rigorous assessment of quantifiable outcomes and that any such impacts can be safely attributed to those actions. Our conclusions from examining the useful discussion by Burkett and McNeill (2017) differs from what they suggest. We would argue that [a] evaluation is essential and cannot be dodged, [b] the more ambiguous (and questionable) the goals that are pursued (especially if linked to public procurement), the greater the temptation to dissociate their raison d’être from established or articulated community aspirations (as appears to be particularly the case with much social procurement), and [c] such philosophical and governance issues (and their instrumentalization in a bureaucratic process) might be very complex, costly and out of reach for capability-poor jurisdictions or localities.

Burkett and McNeill (2017) ultimately restate the key evaluation challenges and propose to move ahead by circumventing evaluations altogether, and advocate the adoption of a ‘strategic’ approach making use of pre-existing (?) data to decide on which social values to make claims for, in ways that suit the purposes of decision-makers in a specific context:

In particular, the nature of many of the social issues we seek to address through social procurement means that the outcomes we look to are:

(a) hard to measure, as they often involve a complex intertwining of tangible and intangible changes over time; and
(b) hard to attribute to one form of intervention, let alone to one contract or one aspect of a single contract.

So, when designing a process to demonstrate social value for a specific procurement activity it is common practice to: reduce the focus to the most simple measures - such as countable outputs like the number of jobs generated; or to revert back to those notions of value that are well established and understood broadly - such as price or costs.

For those seeking to go beyond these simplistic considerations of value and to capture and reflect the complexity involved, a common approach is to engage researchers or consultants to undertake extensive and expensive outcomes-based research. Here the focus is usually on
demonstrating to what extent the outputs generate actual outcomes in relation to the issues we are trying to address.

Procurement is a strategic process that is based on making decisions about how best to spend limited resources to generate the most value for citizens. Therefore, from a commissioning and procurement perspective, to enable the uptake of social procurement a similarly strategic approach to identifying and demonstrating social value is needed.

In practice, a strategic approach means determining the ‘right fit’ to considering and demonstrating social value. A ‘right fit’ is the approach that will ensure enough data about actual and potential social outcomes is incorporated into the decision-making process so that this data can sit alongside both economic and environmental value considerations and ensure that procurement decisions are transparent, understandable and credible.

There are many questionable elements above with which we could take issue, including the representation of price or costs as values – which suggests perhaps a limited understanding of those categories. But the most problematic aspect for our analysis of procurement is the view that being ‘strategic’ amounts to making decisions as bits of data trickle in, in ways that fit someone’s goals and by making procurement decisions that suit pre-existing perceptions about what a community needs and what works (since both these domains were treated as too difficult and costly to tackle according to the authors). Despite our critical review, that report is significant because it does attempt to address the key observation made by other authors and by our review; that credible evaluations are almost inexistent and contrast dramatically with the conviction of many that social procurement is warranted. This is why it deserves scrutiny, and we focus on a last observation about the purpose of the report provided on its back cover. Burkett & McNeill explain there that they’d initially set out to undertake a cost-benefit analysis of social procurement across three distinct examples to demonstrate the added financial value that social procurement creates but found that none of the social enterprises or buyers that were approached (that is suppliers of services or agency clients) had undertaken the steps required to be evaluated, in particular prepared any useful evidence. Presumably Burkett & McNeill would have needed to know what conjectures or hypotheses were useful, which data to collect (an art form more than a recipe), would have documented their methods and connected data to those conjectures to start with. The additional steps to undertaking a meaningful cost-benefit analysis would have been overwhelming. But after noting that the data had not been collected, rather than addressing the difficult issue of evaluation capabilities, the authors propose the shortcut discussed above, presented as a pragmatic approach. This appears to us as an ex post justification of an arbitrary bundling of ‘social values’ into a ‘fit for purpose’ handprint that serves an advocacy role, rather than an attempt to demonstrate genuine outcomes and learn from evidence.

In contrast, in their introduction to a special issue on using public procurement for social policy and society, Grandia and Meehan (2017) review prior literature and contrast the ‘strategic aspirations’ of that field, its attractiveness to policy makers and to social advocates, to its incapability to demonstrate and evaluate its impact and conclude that it lacks strategic maturity. They argue that public procurement for social purposes is a particularly understudied topic within public sector management and that ‘little is known about how procurement
is implemented, how successful it is, what factors and actors determine its effectiveness and successfulness, and how public procurers deal with the (often conflicting) goals that they have to combine in their procurement’ (Grandia & Meehan, 2017, p. 303). In contrast to Burkett and McNeill 2017 who apparently discarded evaluation as an obstacle, Grandia and Meehan appear to want to make the evaluation process more central, broader in scope and more powerful, when they argue:

As such, procurement is often conceptualized as a singular process, masking its complexity and variety of potential roles throughout the innovation and policy landscape. Moreover, the extant literature is commonly set in specific regions and countries of the western world. These gaps are important to fill if procurement is to fulfil its policy ambitions (Grandia & Meehan, 2017, p. 303).

They recognise the hurdles arising from the limited current capabilities in the field but seem unphased by the magnitude of the challenges ahead, due to its necessity:

Outcomes that deliver wider public benefit demand assessment beyond financial metrics and require a longer-term measurement of impact. These measures might themselves be new and innovative and will involve iterative network relationships between suppliers, service providers, public bodies, and communities. If public procurement lacks these capabilities, then its ability to reach desired outcomes in society is limited. The need to extend the evidence base of diverse public procurement contexts in delivering policy aims forms the basis of this special issue (Grandia & Meehan, 2017, p. 304).

While believing that public procurement is an amazing opportunity to achieve public benefits if done properly, they assess this will not realise until it becomes strategically mature. They seem to envisage the public procurement field as on its way towards accessing or developing those indispensable capabilities. Yet Grandia & Meehan are openly uneasy about the increasing number of different policy goals that procurers want to incorporate in their procurement set, from the local to the social to the environmental, etc. They acknowledge that complexity and conflicts among goals are increasingly apparent and appear confident nevertheless that competent managers will ‘be found’ to put some order into this confusion. Hence, they introduce their special issue by positing that the field lacks strategic maturity and, most importantly, that ‘the question whether public procurement is an effective policy tool therefore remains largely unanswered’ (Grandia & Meehan, 2017, p. 307) as they rightly remind readers that any such social objectives could be addressed with other policy tools than public procurement.

The lack of strategic maturity of the field and the diametrically opposed solutions proposed by the commentators reviewed above might in part be due to domain confusion. It appears plausible that the assumed scope of what goes under the label ‘social procurement’, and the nature of what it attempts to achieve, and what researchers believe needs to be evaluated is problematic. Typically, the term ‘social procurement’ refers to the acquisition of a range of goods and services by governments from private and non-profit firms, with the aim of creating social value (Barraket & Weissman, 2009).

Furneaux and Barraket (2014) as well as Murray (2009) have claimed that social procurement is dually concerned with social and financial bottom lines and seeks to maximize public value by diversifying supply chains to include a variety of private and third sector actors (Burkett & Foresters Community Finance, 2010), although achieving best value and opening up markets are not always compatible objectives. As suggested in this chapter’s introduction,
this is a much broader field than the one of interest to this review as it extends to generic social activities undertaken by NGOs and the wide array of work done by social enterprises. As social procurement is an important income source for the third sector (NGOs) and involves interactions with governments and public funds in a number of ways, we need to focus on the simpler case of interest for this review. Burkett and Foresters Community Finance (2010) and Murray (2009) have perceived that conceptualisation and definition issues linked with social procurement have contributed to divergent views regarding their scope but also struggled to disentangle them. Furneaux & Barraket (2014) are aware of the need for greater clarity as they claim that the:

*lack of construct clarity, along with attendant definitional debates, runs the real risk of polarizing policy and research into the already inherently multi-actor, multi-sector, and multi-objective activity of social procurement. [...] that a coherent description of a phenomenon is needed in order to effectively conduct theory-based research, which can inform practice [...] to promote construct coherence, a definition of social procurement is advanced with a typology of the different ways social procurement can be undertaken to deliver social benefits* (Furneaux & Barraket, 2014, p. 265).

They are aware that the degree of subjectivity and disregard for explicitly demonstrating relevance, coherence and effectiveness could well undermine the field, which constitutes a reason for not entitling this chapter ‘social procurement’. Thankfully, Furneaux & Barraket have developed a sound and valuable typology (of broad social procurement activities) that they supplement with numerous examples that we only summarize below:

Type 1—procurement of social services; which refers to activities readily recognized as the domain of the third sector—the acquisition of services directly from third sector organizations which set out to directly achieve social outcomes by procuring social services (such as health, community and welfare services); and is a well-established form of procurement that is led and driven by those organizations, sometimes subsidized but not necessarily, but not the type considered in the current review;

Type 2—procurement of public works or other goods and services of a generic nature (the primary object to be procured) to which social outcomes are indirectly connected (secondary criterion). The intent of the procurement process is to directly purchase a specific output (for instance a physical asset such as a building) with an additional indirect social outcome embedded in the contract (Arrowsmith 2010; McCrudden 2004). This is the key case of interest to this review because procurement is firstly concerned with public goods, services and works—not the delivery of social services designed and conceived by NGOs. In this ‘type 2’ form of social procurement, suppliers are generally ‘for-profit’ commercial organizations taking on additional responsibilities rather than NGOs. Social outcomes are indirectly achieved along with the supply of primary goods and services which remain the main driver of the transaction. So, while the construction of hospitals, schools, roads, public utilities, churches and community centres also feature social good attributes, they are not what this subset of activities is concerned with or intends to reflect (in type 2). Hence, we refer to public procurement delivering a primary service (for a jurisdiction or community) that might also be assisting disadvantaged groups that have been socially or economically excluded— as social procurement in this review.

Type 3— refers to the allocation of a percentage of work to a social enterprise within a project or industry development; where a package of procurement (for example a building) or of a service (for example maintenance) is allocated to be undertaken by social businesses. In this case, there is no acquisition of social services or social
purposes other than letting a social enterprise (for instance employing ex-convicts) undertake, say public works and services, areas not traditionally provided by non-profit organizations. In that case there is no mandated outcome associated with the procurement process – only an appreciation of the mission of the entire social enterprise.

Type 4— refers to corporate social responsibility through explicit management of supply chains; where the purpose is to influence behaviour along the supply chains, for instance when wanting to avoid to indirectly do harm by supporting foreign firms employing child labour; organizations get involved in producing social indicators regarding labour conditions and human rights of workers that might be taken into consideration by governments.

In the remainder of their discussion, Furneaux & Barraket (2014) observe that the differences between types have to do with the direct or indirect nature of the social outcome objective (which is indirect or secondary in type 2) and the ‘intentional’ nature of addressing those social outcomes as found in the procurement process when it becomes an explicit selection criterion. Like ‘legitimacy’ (which is based on transparent objectives endorsed by a community or public), ‘intentionality’ implies that firstly that the primary objective is not forgotten, and remains the foremost focus of any procurement activity; and secondly that targeted outcomes are articulated, communicated and can be used to create a program logic (or other evaluation narrative), and that together this can lead to serious attempts to substantiate achievements in meeting those twin targets. These researchers emphasize also that governments need to be able to explicitly differentiate between means and ends (especially when they impose social criteria on private sector bidders not specialized in the delivery of social services), and grant that while there are many ways to achieve their social value creation objectives, it is incumbent on governments to ascertain the pros and cons of various methods (public procurement being only one among many), and learn about their relative effectiveness through suitable evaluation methods.

The typology developed by Furneaux & Barraket (2014) goes a long way in limiting the confusion, and some of the contradictions that were arising above, especially when considering the nature of social value and questioning evaluation needs. It is important that all activities that have been bundled by some as forms of social procurement do not end in the same basket, although it is not yet clear whether the ‘social procurement sector’ will take notice given its keenness to demonstrate its importance and size. Yet there are important implications (specific to each social procurement type) as noted by Furneaux & Barraket (2014) linked with attempting to map the capabilities for effective procurement to occur, and their allocation between the contracting agency (in charge of managing multiple outcomes in a single project) and the suppliers, which differ completely across the 4 specific contexts. The same applies to the meaning of ‘effectiveness’ which must differ considerably across the four models and be based on different criteria, methods and evidence base.

4. Evidence

This section reviews instances of research that make empirical claims about the effectiveness of various programs that fit under the label of public procurement to assist disadvantaged groups. Programs supporting gender and
ethnic minority equality have featured abundantly in the US context and enough data accumulation has occurred to provide empirical evidence. Main findings can be summarized:

- Orser, Riding, and Weeks (2018) combine statistical modelling and stakeholders’ interviews to examine the efficacy of gender-based federal procurement policies in the United States, which aimed at redressing discrimination and economic exclusion applying to women, and for which the United States government has targeted 23% of its annual half-trillion dollar spend to SMEs and 5% of its spending to women-owned businesses. Their findings indicate that none of the various certifications increased either bid frequency or bid success by women. In fact, they argue that so-called pre-existing statistical gaps in accessing public procurement markets by male- and female-led SMEs were misinterpreted by policy advocates, and that those gaps vanish when sector and firm size (the true determinants of bid likelihood and success rates) are considered (because women work more in sectors and firm sizes that are less likely on average to make bids and be successful). So, they conclude these public procurement targets are wasted as policies. They also argue that repeated contradictory claims made by the government agencies endorsing such policies are never backed by evidence. They call for critical program reviews and increased reporting and transparency, given that the actual gap between rhetoric and program promotion serve political ambitions without using consistent theory or data.

They also call for efforts to produce transparently agreed performance metrics that could apply to most types of policies targeting comparable objectives, whether undertaken through public procurement or not. In their conclusion, the authors examine a variety of theories that existed about the perceived causes for gender inequalities; and observe that since attitude towards (and responses to) procurement markets by women are not very different to the attitudes and responses of men, that policy focus is misplaced, and in fact ends up being a disservice taking attention away from addressing the real disadvantages that might exist. Those authors claim that the absence of evidence and lack of integrity of those supporting the policies justifies supporting greater numbers of third-party studies because ‘without objective and rigorous evidence, it is not clear if private and public-sector supplier diversity initiatives are little more than political and public relations posturing’ (Orser, Riding & Weeks 2018, conclusion).

It is indeed surprising that with all their means, statistics and capabilities, the US government itself has over many decades failed to describe a convincing theory of what changes were required and their logic, has failed to implement a data-based evidence strategy to allow ongoing evaluations, and made ardent claims based on poor output indicators rather than actual outcomes, all this without considering the significant implementation costs. This case provides a sobering lesson about the limitations that local or regional jurisdictions would face if claiming to undertake truly transformative interventions, the theoretical foundations of which they could poorly grasp. It is also a warning about the potential vested interests that ineffective political authorities would encounter, and the resulting resistance to admit having made mistakes (or simply not being able to demonstrate outcomes) allowing ineffective programs to persist and engulf incredible amounts of resources.

- In another very recent study on the use of affirmative action rules to promote women in labour markets, Balafoutas, Davis & Sutter (2016) show through experimental research that in general the impact of affirmative action policies depends on whether these policies are viewed favourably within the affected
community, and that considerable efficiency losses can result if they’re not (as when an advocacy group would lead an initiative that the majority believes is either misguided or inappropriate). They demonstrate this by comparing how agents react when treatments are fair (according to their perceptions) and when they are clearly arbitrary or unfair. While the object of that research is not purely related to public procurement, it is significant because it shows that the perceived legitimacy of so-called policy experiments does matter not only from a moral viewpoint (say a government supports inclusion on moral grounds), but also appears to affect the effectiveness of the policy. Agents acting on behalf of the public at large (such as procurement authorities) that feel that a policy is not supported by the community will be more likely to circumvent rules connected with favouring groups and which entail a judgement of merit. And this is especially the case for complex public procurement because such judgments are implicit. For instance, in the context of quota rules that entail a fair amount of vagueness with respect to the acceptable trade-off between preferencing targets and efficiency in procurement implementation. In previous chapters, numerous examples were provided of cases where a national policy has been centrally designed and clearly communicated but was not implemented at the local level. Among many possible reasons, local perceptions about the fairness of those measures, and perceptions of whether they are locally supported might have played a role. One tricky aspect of systematic favouring to address social or other disadvantage discussed by Balafoutas et al. (2016) is the possible victimisation of the group that the policy tries to help, and the possibility that this leads to resentment build-up by those who lose out from the policy, irrespective of the statistical observations that were used to make the initial case.

- Another problem associated with the implementation of affirmative action through public procurement discrimination policies has to do with potential negative impacts on other areas of women activity – which would have been difficult to predict initially, but in hindsight affect substantially the net impacts of those costly policies. Fairlie and Marion (2012) empirically demonstrate for instance that affirmative action programs that apply to traditional labour markets may alter the opportunity cost of starting a business and affect negatively women entrepreneurship. Their evidence shows that the elimination of affirmative action in California and Washington States surprisingly led to modest increases in self-employment among minorities and women in both those States. This appears consistent with their own hypothesis that the opportunity cost of starting a business overall fell due to variations in opportunities in the traditional labour markets and services industries where women had been employed rather than being an outcome of any deliberate set of policies (although the sign of the estimated effect is not uniformly positive for all groups of women in their empirical study). The point here is that simplistic output-based redistribution (in the case here worth billions of dollars awarded annually to minority and women firms which are controversial politically and judicially) have been deemed effective by some researchers looking strictly at outputs; and ineffective (neutral or negative) by many more seeking to understand the real determinants of those shifts. The point made by Bates and Williams (1996) that affirmative action programs may lead minority-owned firms to overextend themselves and eventually leads to lower business success is worth reiterating. This is not captured by reviews that only look at outputs such as numbers of bids and procurement awards rather than outcomes such as business sustainability for instance. What matters is not that negative impacts of some affirmative action policies have been demonstrated (although important
overlooked negative costs appear plausible), but more that there are strong grounds to doubt the ability of local and regional jurisdictions to theorise such complex matters, to gather dependable data and produce credible evidence; and steer clear agendas that don’t get captured by various interest groups, from industries, communities and NGOs.

- Researchers such as Holzer and Neumark (2000) that have undertaken systematic and detailed reviews of affirmative action programs (across the board, not only through public procurement) have shed some light on their overall limited effectiveness and potential efficiency costs. They claim that the theoretical literature from labour economics generates ambiguous results on whether or not affirmative action programs result in efficiency gains or losses; much depends on whether or not constraining/active discrimination (as opposed to historical legacy disadvantages) exist in the absence of these programs, whether other market failures (such as externalities, and capital market and information imperfections) occur, and on how these defects affect human capital formation and job assignments among protected (by policy) and unprotected groups. They find that when significantly lower participation by a group exists (for instance by women), it usually remains unchanged after the introduction of the policy – which makes the policy ineffective. They also observe that there is mixed evidence regarding whether affirmative action in contracting and procurement props up weak companies, that eventually fail or supply poor value to consumers (net efficiency losses). A result of particular interest for this review is that minority business enterprises deriving a large percentage of their revenue from local government are found to be relatively more likely to go out of business; which some secondary evidence suggests might be attributable to the fraudulent formation of front companies for the sole purpose of qualifying for these procurement programs. Holzer and Neumark (2000) note that local government programs providing genuine assistance to small enterprises, and penalties for fraudulent behavior, appear able to promote success of minority business enterprises. All in all, their review concludes that the evidence suggests that affirmative action produces:
  - Limited instances of improvement (limited effectiveness) from the programs on purely efficiency grounds;
  - Relatively small sacrifice of efficiency (with very little compelling evidence of deleterious efficiency effects of affirmative action – but note that many studies do not consider broader welfare effects and government costs which go beyond efficiency considerations); and,
  - Significant positive redistribution towards women and minorities (output measures).

The authors lament the absence of appropriate government-led economic units capable of undertaking evaluations approximating random assignment, as have been used in health and justice, as well as in research on employment and training programs, noting that such exercises require a certain scale to be credible.

- Marion (2009) considers the complementary and useful question “How does affirmative action affect the cost of government contracting?” and estimates the efficiency loss of discrimination policies by comparing (after adjustments) road construction project costs in alternative scenarios. He finds that a road construction project costs the government 5.6% less to complete after the elimination of the affirmative action program in California, more than many expected. He claims that the observed savings to California
from eliminating affirmative action on a broad scale were significant and suggests that it saved an estimated $64 million in the two years featured in his research. While this confirms that there are significant distortions and costs to taxpayers as a result of the imposition of discrimination requirements, this can be attributed to other effects. Those costs are probably not caused by differences in productivity between discrimination-satisfying and non-satisfying construction sub-contractors (which would be the case if discrimination made less productive companies win bids), but because when discrimination is implemented the total number of bidders is reduced, and that lesser competition and greater concentration to only a few bidders (empirically verified in correlations done by the author) leads them to push for higher bid costs, ultimately faced by the states, that is consumers and taxpayers. When considering the potential positive externalities arising from increased minority participation and employment, Marion concludes ultimately that the evidence is mixed.

Howe and Landau (2009) claim that Australian state governments have used public procurement to circumvent restrictions on their capacity to make labour law, which had been imposed by past Federal Coalition Government’s industrial relations reforms a couple of decades ago. They use a case study of a program during that era in which an Australian state government has sought to use its purchasing power to regulate labour standards in the cleaning industry, as a ‘responsive regulation’ and suggest that there is potential to extend this model to pursue a social goal to other areas of government procurement.

The prospect that states (also applicable to local and regional jurisdictions) use public procurement to engage in policy warfare with other government levels is unfortunate (irrespective of the context and the cause), as it hijacks critical institutions to pursue ideological agendas (whatever they may be), and this becomes an example of policy capture by interest groups (discussed in chapter 4). It creates substantial costs (transaction costs, legal costs, interest group capture, transparency loss, efficiency losses, etc.) and most importantly leads to the possibility that the procurement process (due to its opaque nature and flexibility) could become a platform to pursue sectarian agendas that the public has not formally sanctioned. Howe and Landau (2009) described this as an ‘innovative approach’, yet it shows rather political manoeuvring, underhanded manipulation of procurement rules, and a very subjective (left in the hands of procurement bureaucrats) approach to regulatory control.

Significantly, the authors state that they do not ‘comprehensively evaluate the effectiveness of the Program in bringing about improvements in labour standards within the school cleaning industry’, despite the rationale for their paper being that they are interested in the effectiveness of achieving social change, where obviously effectiveness of change sounds more like a political agenda of resistance and does not in the end consider assess the policy effectiveness and the impacts on services recipient, for which procurement has actually been setup. The political and legal battles occurring in the background might lead to social changes without any mechanism legitimately linking the wishes of constituencies with the ultimate purposes of the agendas at play. Their empirical investigation itself is based on qualitative interviews featuring a few stakeholders involved in the school and cleaning sectors, the selection and vested interests of which are unclear. From the results, those stakeholders were clearly of the view that the program was useful (without providing more details); and they identified program complexity and absence of monitoring of contractor compliance as main weaknesses – which is confusing as it
gives the impression – since it is never established that the program made a difference on behaviour – that it is the ‘resistance’ and social change aspects that are celebrated by the interviewees. At some points in the paper, reference is made to standards ‘in line with community expectations’ which appears as a catchphrase (referring perhaps to opinions about best practice that could be clarified if indeed that was the case) but appear as a significant stretch given that the state’s purpose was perhaps retaliatory, and the legitimacy of Commonwealth and State governments more likely to be based on ideology than established community views and judgments.

McMurtry (2014) champions the view that the sub-national level of procurement is a space for social movements attempting to redress economic exclusion to claim alternative powers, and to protest within and against capitalism (and sometimes globalisation) that seems to fit the narratives expressed in much grey literature. He argues that this constitutes an opportunity for alternative political movements because of the lack of visibility of the procurement space (so it invites deliberately evasive actions away from public scrutiny), and for local governments to become ‘serious’ actors in global politics, yet unaccountable. While the declared purpose of those views is to idealistically replace ‘the profit logic of the market’, it typically does not attempt to define or articulate what it is to be replaced with. Ultimately, it is unclear what the relationship any such tentative outcomes emerging from any hijacking of local procurement institutions to convey social dissent will have with community logic or ethics. What is particularly strange is that the system it replaces is portrayed as not caring for ‘real community values’ and the social movement strategy adopted really makes no attempts to uncover them or connect with a well-articulated alternative system. The relevance of the capture theory of policy-making is striking as both those who express the desire to change the system (say social movements/political interest groups as found in the grey literature) and those more traditional actors who want to take advantage of it (say industry interest groups and government-friendly political interests well placed to benefit) aim to benefit from the limited visibility and/or transparency of that space, the looseness of its administration and the ongoing failures to monitor, evaluate and enforce compliance.

One of the ultimate issues with the arbitrary pursuit of non-economic goals or redress (social disadvantage, green-sustainable, quality and safety regulations, innovation, labour rights justice) by attaching them to government procurement (as secondary objectives) is their potential to become hidden tools to pursue concealed favouritism. This is a genuine prospect given:

- the subjective nature surrounding the choice of goals themselves (that a public administration can pursue simultaneously);
- that the implementation that can easily be ‘captured’ by various parties (ranging from private industry to local communities wanting to retain their jobs); and,
- the speed at which procurement can be revoked whenever political heat increases, or when corruption is suddenly uncovered and creates risks of legal proceedings, or simply when political winds shift.

In all cases, efforts to evaluate what happened, why, how, and to which extent (in other words any ability to learn) is lost. The extent to which local authorities are determined to use local procurement to pursue their own agendas cannot be overestimated. Decarolis and Giorgiantonio (2014) provide a simple example of the discretion enjoyed by jurisdictional authorities when they examine evidence regarding the awarding of public works contracts in Italy applicable to the local and regional scales. Strong EU directives impose in theory rigid and transparent procedures to foster competition and limit corruption and support EU-wide competition, based in part on the use of sealed
bids and prevent local administrations to discretionally exclude firms, in particular for the sake of inhibiting outsider bids. Because some bidders for public works are also liable to default (by making unrealistically low bids to win – see discussion in chapter 4), having a large pool of bidders is beneficial for the communities, as it allows to both compare the realism of the bids made and take action if things go wrong, for instance if the need to select an alternative bid arises.

These authors show that favouritism emerges routinely through the fine design of regulations for the entry criteria and particular awarding rules and clauses by localities designed systematically to favour (often openly) local firms. They report that even when such local processes were ruled unconstitutional by the EU and prohibited, those same Italian localities and regions kept on introducing new, overlapping conditions with little rationale or formal applicability (such as ‘suitability of localization’, making references to ‘environmental and social understanding’ of the locality by those firms) which were merely attempts to favour local suppliers but engineering vague allusions about their likelihood of ‘socially fitting’. From their extensive analysis of northern Italian regions, they show that local authorities systematically introduced distorting rules (under a wide range of guises that appeared superficially community-driven) to preference local suppliers and linked with so-called social, green, innovation values and political agendas, that these were repeatedly over-turned by higher authorities, and that new ones were again introduced. They claim:

The analysis presented is a cautionary tale against the risks of decentralizing the design of important aspects of the procurement regulations. The lessons learned for green and innovation procurement are twofold. On the one hand, the propensity of local administration to restrict the entry into auctions suggests that the green requirements might be used in a distortive manner to perpetrate favouritism. On the other hand, the excessive fragmentation of the Italian procurement regulation reveals the presence of severe barriers to competition that, for such a sophisticated type of procurement as the procurement of innovation, are likely to be a formidable obstacle to its proper functioning (Decarolis & Giorgiantonio, 2014, p. 182).

5. Social procurement evaluation frameworks and toolkits

The social procurement domain is one where toolkits and templates to ascertain the nature of social values and possibly rank them have recently flourished. This fact must be accompanied with the observation that many such instruments appear to apply to forms of social procurement outside the scope of our review, although the vagueness sometimes surrounding them makes it difficult to judge. Given our specific interest in ‘type 2’ social procurement (discussed above as outlined in the analysis of Furneaux and Barraket 2014), the cases that interest us are those where an evaluation (or tool) has been designed to assess the effectiveness of procurement interventions in which secondary/additional criteria (linked with correcting social disadvantages) are added to the primary provision of a collection of goods, services or project. Hebb and Hachigian (2017) have undertaken a review that appears to target those, and we include a summary of their findings, as well as comments on some of the frameworks, cases and tools they themselves listed.

The authors confirm without hesitation that very few authorities (and they consider Australian, Canadian, UK and USA examples) measure or evaluate outcomes at all; and that this might be due to lacking resources, limited
analytical and interpretive capabilities, poor handling of economic concepts to measure ‘value for money’, etc. The major part of their report entails a considerable discussion of principles that would apply to any evaluation (social or not, and procurement-related or not) about stakeholder engagement, agreement on outcomes, measurability, evidence gathering strategy, etc. They include a lengthy introduction related to the rationale for evaluations in general, and why social organizations and social enterprises should not be perceived as special cases immune from the need to step up and take on the evaluation challenge.

Their preliminary list of ‘social value procurement’ evaluation cases shows that the following situations were surveyed:

- A majority of cases where no evidence of formal evaluations occurred despite prior commitments to do so;
- Some toolkits and/or guidelines were produced by umbrella organisation telling others how they should conduct evaluations – but not undertaking any themselves;
- A few cases of government systematic reviews usually triggered by annual reporting requirements; and,
- A couple of actual evaluation reports (1 in the UK and 1 in the US) in the entire review.

From examining the reports and organisations mentioned in their overview, it becomes clear that many fall across the 4 types of social procurement; with a number having to do with the contribution of social enterprises, therefore outside our narrower scope. They also importantly note that much of the focus of evaluation documents and reporting requirement they encountered were strictly focused on outputs (yet sometimes mis-labelled as outcomes in specific reports) that describe how many X-organisations were awarded contracts (of various types of bidders), how many Y-participants were employed or trained to do so, etc.; with very little in terms of social or economic participation impacts, nor formal discussions of outcomes that properly articulated social transformation mechanisms the were supposed to operate. They note references to some intended practices apparently more developed in the UK (financial proxies, cost-benefit analysis, social return on investment, etc. – all standard evaluation tools) but eventually conclude that public commissioners, while familiar with those methods, lack adequate skills to effectively implement them and that they were generally abandoned.

Hebb and Hachigian (2017) eventually comment on the fragmentation of evaluation methods (probably as many as there are studies) and the lack of standardization of tools, social value metrics, etc. Given that situation, it is somewhat to be expected that many organisations would propose their custom-made toolkits, even in the context of a lack of agreement on universality of the methodologies for different evaluation contexts and absence of historical evidence on their use. They also note that community organizations (which often undertake their own self-evaluations and are clearly less prejudiced in that sense) often purposefully expand arbitrarily the range of community benefits they envision in their activities claiming that they want to ‘capture the full range of community benefits outcomes, not just those aspects that can be easily monetized and to provide a consistent way of measuring Community Benefit objectives’ (Government of Wales, 2014). Once again, this might be more relevant for the other types of social procurement.

Out of the five case studies considered in that report, none is strictly an example of evaluation (which would feature an objective, some evidence, some analysis and a conclusion), and none appears to fit the ‘type 2’ context. All cases appear to be based on attempts by umbrella organisations (themselves assisting many satellite
organisations) to provide frameworks or toolkits that advocate the inclusion of social criteria in a manner or another. At least one case is focused on SME preferencing (so not strictly about social inclusion or disadvantages) and another is concerned with spending/employing locally (portrayed as social policies) – although the report had ‘social procurement’ in its title. After verification and perusing those organisations’ own reports, we can corroborate that these included extensive chapters entitled ‘buy local’ and ‘hire local’ where the assumed social disadvantage focus appears questionable. Another case is entirely about social enterprise procurement and is therefore not particularly useful for our review. In the end, and as alluded above, the conclusion of that report merely lists practices considered desirable (best practice would be an exaggeration) that would be applicable to almost any evaluation context and could be gathered on any website featuring evaluation expertise.

After we scanned a hundred or so reports featured in the review just above, the only one that appears to relate to ‘type 2’ social procurement situations and includes interesting observations for local and regional jurisdictions is the ‘Final report of the analysis of the impact and value of community benefit clauses in procurement’ by Sutherland, McTier, Glass, and McGregor (2015). The latter is highly descriptive of outputs for a collection of 24 contracts from Scotland examined in some detail, and rich with stakeholder perceptions. Typically, it notes that ‘targets around job opportunities, apprenticeships, work placements and training for priority groups have been exceeded’ (that is the typical output indicator) but also that ‘capturing the additionality and sustainability of the CB outcomes is harder to calculate given that procuring organisations have not typically required their contractors to monitor the sustainability and additionality of CB outcomes’. This means that true outcomes (or impacts) could not be ascertained because they had not really been organized to feature in reporting or would have been too costly (as governments might appear to push those activities on – or blame – the private suppliers). A large share of the recommendations from that main report, following 5 years of yearly reporting and many interim evaluations have to do with the need to monitor and to evaluate outcomes, that familiar slogan being repeated time after time.

The recent Canadian review by Hebb and Hachigian (2017) discussed above mentions some sources on social procurement assessment from Victoria (Australia) which they classify as ‘frameworks’ since few actual examples of evaluations can be found in the public domain. This contrasts with the current outbreak of encouragements on the web grey literature for Australian local administrations and NGOs to get involved in agenda-driven (social, green and innovation-based) procurement. A noteworthy example is the campaign run by the Municipal Association of Victoria (Government of Victoria, 2018b). In their promotion materials (Government of Victoria, 2018a), they make claims that appear unsound in the light of everything that has been discussed above, some worse than others. Their website claims that:

- There are no legal impediments to implementing social procurement ‘as long as they are not discriminatory’. This requires some explanation since all examples encountered aiming to redress disadvantages were by definition discriminating by nature; in that they try to institute a mechanism to favour types of organisations (or bids) at the expense of others at one level, and the discussion above showed that social procurement could indeed mask attempts to assist local industry;

- Social procurement simply needs to be consistent with the local government act’s requirements of ‘sound financial management’, ‘competitive process to test the market’ and ‘best value principles’; which are according to most evidence analysed in the previous chapters usually compromised (almost by definition)
when other principles or criteria are introduced – and not a single example of assessment of those principles could be uncovered in our review;

- The social procurement aspects must be transparent, clearly stated, accessible to all, and well monitored; this is an idealistic statement completely out of sync with the reality of procurement;

- Social outcomes are not difficult to measure as there are well established methodologies such as cost-benefit analysis (where they refer to the Burkett and McNeill (2017) discussed earlier). The Burkett and McNeill (2017) report had established that those authors had been incapable of undertaking any evaluation of their chosen case studies nor produce a single instance of applied cost-benefit analysis because of the absence of data and capabilities;

- Social procurement does not compromise the quality of goods and service – while we have seen that at best, the evidence is mixed on that – and no assessment of quality of the primary goods or services was found in the social procurement literature. Yet a logical argument would claim that if social provision becomes a criterion to select suppliers with different capabilities (or invite others to invest in social procurement aspects), then quality of the primary services, or public value might not be the central gauge to select bids anymore; and if the policy is effectively leading to other choices, a trade-off will necessarily occur away from the best possible primary services supplier.

- Social procurement does not represent an additional burden for procurement officers, nor do they need to make significant structural or organisational changes to their procurement policies and processes in order to include social outcomes – this claim is either deceitful or incredibly naive as some additional expertise is necessarily required (or if it is not, that is perhaps why the only evidence we find is that no evidence is ever produced – and the social aspect is symbolic and never demonstrated). The document instead claims that the introduction of social requirements can reduce project costs or be readily integrated – which is clearly an advocacy statement with no explanation or evidence. It raises the possibility that the authors refer to forms or practices of social procurement that are of the other types (1, 3, 4) as discussed in the section above – and not directly relevant to social procurement of type 2, although the claims above remain vacuous irrespective.

Given all of the above, our review concludes that no best practice appears to have yet been developed that would be embedding social benefit criteria (applicable to conventional type 2 procurement) in ways that support the monitoring and evaluative needs of such approaches. Most of the proposed frameworks or toolkits incorporated either arbitrary statements about social benefits (that have been applied in one location but cannot claim any generalizability and never truly assessed), involve distortions in their scope (often not about social benefits but disguised buy-local procurement initiatives) or apply only to the logic of other social procurement contexts (types 1, 3, 4 in particular many targeting social enterprises). These do not constitute valid methodologies to provide guidance for type 2 situations. Moreover, because these frameworks or suggested tools often target non-expert audiences, they appear prone to making incongruous claims and confusing concepts (as for the use of arbitrary regional multiplier templates sometimes included in toolkits that experts would never consider acceptable).
6. Integrating social procurement and efficiency? McCrudden’s overview of the arguments

In contrast to the claims made above, McCrudden (2007) presents in his noteworthy book a supportive, yet balanced, analysis of the political and legal dimensions of the idea of ‘buying social justice’ which he defines in a way that fits type 2 social procurement. His chapter 5 entitled ‘Buying social justice’ provides the most comprehensive and sophisticated array of arguments for and against the idea of ‘linking’ public contracting with social regulation, with a view to assess whether this is a worthy approach to both objectives. Indeed, he asks whether there is a way of harnessing or exploiting the presence of the state in the market for social purposes without causing unacceptable political harms or detriment to the market as the primary means of generating wealth in society? Can the two be brought into alignment to achieve optimum economic, political, and social results? In this chapter, [I want] to present a relatively full preliminary exploration of the pros and cons of the use of procurement linkages to advance status equality, from an economic and political perspective initially (McCrudden, 2007, p. 114).

For its depth and coverage, his whole treatment is worthy of interest, but is difficult to summarize, and some parts are rather abstract. This section attempts to condense some of its key points and borrows largely from that chapter. We note that McCrudden does not shy away from the aspects of the analysis linked to efficiency (as covered in our chapters 2 and 3) and initially identifies seven broad arguments ‘against’ linking procurement and social policies, which he subsequently criticizes. Based on his extensive experience and own review of the literature he claims these are:

- **Irrelevance to the appropriate functions of purchasing:** which refers to a basic incompatibility between the logic of the two functions (supply a good, service or project versus social outcomes), the types of decisions that need to be made and perhaps the capabilities and objectives pursued by procurement managers (although these are not terms used by McCrudden as such) being excessively difficult to reconcile make it impossible to manage;

- **Costs of linkage:** describes extra financial costs that result from the more complex decisions, and the extra capabilities required (decision, monitoring, compliance, etc.); McCrudden in his analysis contrasts a few models or ‘approaches to linking’ based on [a] prohibition or tenderer qualification, [b] post-awarding contract conditions, [c] equality norms commitment, [d] technical specifications-based decision; because they all embed the social criterion in different manners. While the different models feature different mechanisms through which efficiency and welfare effects can be conjectured, the usual conclusion across them all is that it is better to keep the two policy areas separate on both effectiveness and public interest grounds;

- **Fairness and discrimination arguments:** refers to disadvantage encountered by contractors not interested or capable of providing social services, or the cost of forcing them to do so when bidding for procurement (that will be passed unto those who will bear the burden, usually consumers, taxpayers, etc.) or the resulting higher bidder concentration leading to higher prices;
• **Direct regulation is preferable to procurement linkages**: the view that using public procurement is really unnecessary as direct legislation can be used to pursue the same outcomes, is more transparent, accountable and less distorting of market functions; he also describes the view that not all areas of procurement can or should be linked to social justice objectives as this can lead to arbitrary fragmentation of sectors subjected to that social value imposition and others free from it;

• **Regulatory capture**: follows from the above and adds the greater likelihood of procurement processes to be captured by sectional interest groups, which leads to distortions in the market and in government agendas – McCrudden (2007, p. 120) does agree that ‘all in all, public procurement linkages seem tailor made for extensive rent-seeking, rent creation, and rent-extraction [...] They benefit politically organized groups at the cost of politically unorganized groups’ which was an important theme in chapters 2 and 3;

• **Good governance objections to cumulative agency issues**: refers to the web of principal-agent relationships created through extensive procurement structures (discussed in chapters 2 and 3) whereby the public relies on the government, which relies on purchasing authorities, which rely on purchasing officers (and more in extensive decentralized systems) and which rely on contracted suppliers (often with their own subcontractors), etc.; and the argument is that the more policies extraneous to the main purpose of the primary contract are taken into account, the more the process of awarding the public sector contract will have to become bureaucratized and create red tape in order to deal with this problem. All of this tends to impede the procurement process and goes against the goal of trying to decrease bureaucratic constraints on business; leading to an accumulation of burdens linked to compliance, to capabilities, in such a way that ‘the greater the number of social policy objectives incorporated into the process by which tenders are awarded, the more the process is likely to generate requirements that are contradictory, or at least in tension with each other’ (p.121) and ‘if social policy objectives are incorporated into the process by which tenders are awarded, the process may thus no longer be transparent. The larger the number of extraneous criteria which are taken into account, the less easy it is to predict the decision made on the award of a tender.’ (p.121);

• **Abuse of power**: as procurement can be harnessed by a public body to further its interests or goals (when other avenues have been blocked), not connected with community and public interest; an example associated with tensions between states and Commonwealth has been discussed above in this chapter, and McCrudden adds:

  sceptics see something rather distasteful in using a mechanism that seems so closely associated with evading democratic and constitutional controls. However valid the purpose, evading these controls by using linkage is in principle wrong and should not be encouraged. To the extent that there is a constitutional division of power within a country, between local authorities and central government, or between federal and state government, then evasion of this division of responsibilities by using procurement is unacceptable; (p.122)

The arguments above provide an excellent summary and are based on a conscientious account and understanding of the nature of the main elements that make up the efficiency perspective described in chapters 2 and 3; with
many of the objections being recognised as inescapable by McCrudden – therefore requiring weighing of pros and cons if other positive benefits should enter implicitly or explicitly calculations of what is desirable.

In the second half of the chapter, McCrudden describes arguments in favour of ‘linkage’ (again the connection of ‘secondary’ social, environmental or other objectives or targets with the delivery of the ‘primary’ output). Some of those contentions constitute direct responses to the objections above and can be technical when referring to specific issues or legal dimensions. In all cases, McCrudden appears to make good points, but they generally rely on the general conjectures he makes that effective legal, auditing and political processes exist, and that they have the authority required to ensure that ‘efficiency’ agendas do not get off-track or confused and that ‘equality’ concerns are well understood within the bureaucracy. These assumptions become ever more questionable in regional or remote contexts, as well as in less developed countries. McCrudden’s arguments are:

- **Inadequacy of other methods of compliance with equality legislation**: which is a reference to a growing concern in many countries that traditional mechanisms of securing status equality are not adequate (according to advocates) and that many orthodox legal methods of combating discrimination in employment have proved to be of limited effectiveness. While that claim is quite credible, it does raise the question of whether governments (with their apparatus and powers to grab, enforce and deploy resources) which are argued here to be ineffectual to address some of these social problems, will be better served by requesting private suppliers involved in a primary product or service supply (with no specific interest or capabilities connected with the social issue they must ‘link’ with) to act as trustworthy ‘agents’ and satisfactorily monitor and control them. McCrudden admits that such expectations will be more likely properly served in the specific case of ‘prohibitory’ enforcement (where for instance suppliers can provide a bid if they don’t use products or factors of production that involve undesirable attributes such as using child labour, using products grown in places using child labour, using materials environmentally prohibited, etc.). This is indeed somewhat likely to be feasible in such a simple scenario because it only involves pre-monitoring. But in the case of much more complex social challenges where mainstream methods have been found to be inadequate, demonstrating that the delivery of the primary goods or services is effective will be unmanageable, and enforcing suitable levels of social change through adequate monitoring and compliance regimes largely unachievable. There is no reason provided in that discussion as to why private suppliers facing the same significant problems (that government agencies confronted) and busy supplying the primary good or service they have committed to do would manage it. Furthermore, they would have the burden of demonstrating effectiveness by undertaking suitable monitoring and evaluation they are poorly equipped to handle and/or are unlikely to be unprejudiced towards – this probably explains why so few evaluations can be found in the studies examined above that feature credible evidence of impacts.

- **Mainstreaming requires linkage**: which McCrudden claims is the endorsement that government and public bodies are increasingly required to weave equality into the fabric of decision-making across all spheres of government - in short, to ‘mainstream’ equality issues in public policy is a broad goal in some political spaces. This appears to be an ideological position that is perhaps shared by some within government, possibly as a form of public relations, but debatable as a key goal nevertheless, legitimacy and democracy being more universal purposes.
• **Limits of a 'commercial' model of government contracting**; in which McCrudden argues that the 'commercial approach' is not necessary for government agencies managing procurement (although this might contradict his own endorsement of the necessity of competition to maximise public value in the previous list of objections) and could be replaced with corporate social responsibility. There is a substantial literature considering these normative issues, where human opportunism (within the private, public and NGO sectors) is conceived in the abstract as something that can simply be moulded or replaced by setting different norms (under duress or through good example; suggesting that if governments behave well, so will private actors). This idealist view of human purpose and society clashes with the evidence provided in all chapters of this review that both procurement authorities, suppliers and other agents including NGOs will aim to (more or less purposefully) manipulate the system and either seek private advantages (straight corruption) or take advantage for their own agendas (ideological manipulation) across most institutional settings, and that transparency, accountability and competitive forces play a critical role in moderating those forces to serve the public interest.

• **Assisting the internalization of externalities**; as McCrudden states that governments themselves are a source of inequality and that public procurement itself must be involved in attempting to redress undesirable discrimination (stemming from government’s own activities) or negative redistribution impacts when market failures are being addressed. This is consistent with economic theory that agents within governments are opportunists and will take advantage of their position if discretion has been allowed. But again, the argument appears incompletely coherent in itself; if governments cannot control the inequality they create inadvertently (and which are clearly against their mandate), why would public procurement led by different types of bureaucrats (usually handling even more ambiguity and with more discretion) and private firms (caring explicitly about their own bottom line) do better? And if some groups are negatively affected by government policies addressing market failures, why not compensate them directly and transparently through mainstream subsidies; rather than arbitrarily through procurement where the risks of corruption and of shifting agendas are serious, effectiveness is extremely uncertain (and almost never evaluated) and have been recorded throughout this report. As was discussed in the arguments against type 2 social procurement above, cumulative principal-agent relationships only multiply risk of opportunistic digressions.

• **Sustaining and increasing competition**; where McCrudden makes the valid point that an important advantage of addressing unwanted discrimination that excludes some groups from economic participation is to redress a situation that was damaging to competition itself. This is indeed why there has been so much research directed at whether gender-based procurement policies have been effective, and the evidence above was mixed at best; in fact, the evidence showed more often than not a possible contradiction in attempting to discriminate to redress discrimination. In many cases new discriminations could arise and many suggested simple policies directed at specific barriers would most likely be more effective. In the previous chapters evidence indicated that a considerable proportion of female workers and female entrepreneurs preferred to compete openly and were not hugely affected by procurement efforts to preference them (and in some cases reacted negatively to the condescending nature of the policy).
• **Supplying the 'public good' of equality:** the classification of 'equality' as a public good is clearly questionable from a methodological viewpoint as it does not fit conventional terminology, in particular the distinctive and more subtle interpretation of public good found in economic theory (which McCrudden appears to explicitly want to refer to). Many economists would probably prefer the terms ‘equity’ and ‘distributional goals’, which they have developed extensively, backed by sophisticated theoretical concepts and measurement methods. The term equality can be used as an instrumental term when it refers to precise aspects of the economy (equality of outcomes, of income, of wages, etc.) while equity is used to refer more loosely to fairness in treatment. The key point is that equity should not be considered a ‘public good’ according to the conventional political economy of market failures for a number of technical reasons, well described in Weimer & Vining (1989). Yet it is not unusual for non-economists to use that term extremely loosely whenever they seek government funding. This is typically accompanied by some conjecture that something (a good, service, or abstract state of the world such as ‘equality’) is worth more than what individuals appear willing to pay for it. Beyond those remarks about domain fallacy, it should be noted that if such a contentious social goal such as ‘equality for all in some way yet to be defined’ was deemed worthy of consideration and public subsidy, it should more than ever be openly debated and framed, and not administered on the side as a secondary consideration to be implemented by a public procurement bureaucratic authority.

Despite our doubts about some of the arguments above, we acknowledge the audacious and valuable work that McCrudden has undertaken in trying to line up those complex issues and we convey further noteworthy observations he makes about the potential of public procurement:

• **What emerges is a complex picture of apparently competing considerations that seem to be starkly at odds with each other** (in the remainder of his book he describes in some detail how countries have attempted to deal with these issues in policy and legal terms, and assesses the limited experience accumulated worldwide on the development and effects of procurement linkage, including the successes of such engagement, as well as its limits.

• **There is no consensus on what makes for an effective regulatory scheme. The wise policy maker, therefore, will not want to put all her eggs in one basket, and will want instead to keep a range of tools available with which to attempt to achieve the desired changes in behaviour.** (McCrudden, 2007, p. 18)

Both these points are valid, as a summary of his own analysis, and in terms of the way public procurement could play an alternative and perhaps more complementary role when the inflexibility of legal, electoral-constitutional and policy dimensions make it difficult to address relatively transparent agendas that some believe represent a consensus. We can only agree that this would require significant capabilities shifted within government administrations and might altogether remain out of the reach of local governments. But it is clearly a perspective that an expert of sophisticated national intervention systems would adopt.
7. **Conclusion**

Because of the diversity of commentators involved, and the dominance of purely advocacy contributions not actually engaged in demonstrating either logic or evidence, the narrative found in this chapter is more fragmented; yet in that sense it reflects well the state of the art on type 2 social procurement. We conclude with a few final comments that reflect the main elements of our interpretation:

- The research review commented on the vagueness of the term ‘social procurement’ which is used in the grey literature particularly to cover activities reaching far beyond the situation of interest for our purpose: That of a government with a mandate to provide some goods or services (primary objective) also ‘linking’ a social goal (as a secondary objective) through the procurement process to implicate those suppliers in addressing those goals (‘type 2’ as clarified by Furneaux and Barraket [2014] above).

- Many papers and reports use the term ‘strategic’ (as does much public administration research and practice nowadays), in quite different ways. Sometimes it refers to [a] considerations of how to manage stakeholders and other jurisdictions by attempting to anticipate how they will react to policies or interventions in the context of public procurement (discussed in chapter 3), other times it refers to [b] smart and efficient institutional design to achieve potentially worthwhile objectives, and other times [c] it refers to using public procurement to progress agendas (or to advocate policies) in slightly unconventional or devious ways, sometimes with the purpose of circumventing other policies or pushing for views or positions with limited legitimacy from a common knowledge and public interest point of view.

- The majority of research reports commented on the absence or poor quality of both evidence and evaluation efforts, with some social procurement advocates claiming that this should perhaps not be a priority; and that is should be left to those who know best about social values to decide which outcomes to pursue, or that it would be ‘strategic’ to leave it to those experts. Others in contrast suggest that this is a priority and that the current state of affairs constitutes a definite indicator of the field’s lack of strategic maturity. The issues must be considered when attempting to provide advice to local and regional governments about the challenges they will encounter if they engage with socially motivated procurement interventions.

- The notion of ‘distance’ (between the nature of the procurement considered and the ‘social’ benefit added) was suggested in some research (including McCrudden 2007) and by some commentators as perhaps relevant, but it was never fully articulated. It is plausible that the pre-existence of strong connections between certain types of goods or services and the social disadvantages that some want to address through the use of public procurement is an important determinant of both effectiveness and legitimacy. Limitations in access to training and other capabilities applicable to disadvantaged labourers or groups fitting directly some major project come to mind as natural alignments, although even then effectiveness cannot be guaranteed, some interest in seeing it done exists. Related but more challenging are objectives such as addressing workers’ readiness to work and community support, which appears somewhat related, but slightly more distant. At the other extreme, when issues of social cohesion and undesirable behaviour, poor health and education, limited gender opportunities linked to cultural norms,
etc. are added, the agenda drifts away and it is likely that the critical expertise required and the distance between issues and the primary objectives of public procurement makes it a poor fit. It would indeed be unfair to both those having to deliver the primary goods, and those in charge of managing or addressing social issues to place all these elements in the same basket and expect demonstrable outcomes.
Chapter 7: Cases study of Aboriginal procurement in Canada and in Australia’s Northern Territory

Aboriginal procurement policies have recently appeared as a category of interest on the websites of many Australian jurisdictions, although most documentation found there is currently about principles and intentions, and very few evaluations can be found in the public domain. The Commonwealth Indigenous procurement policy is probably the most ‘visible’ in that area, with resources at its disposal and interests in Indigenous enterprises across all environments (including urban and not necessarily disadvantaged businesses and individuals) and featuring involvement in matters other than procurement as such. As a theory and policy nexus, ‘Aboriginal procurement’ comprises elements from all the topics discussed in former chapters, so that all aspects previously covered have some relevance. If we focus particularly on using procurement to enhance Aboriginal economic participation in regional and remote contexts, the issues raised around procurement transparency and accountability, articulated theories of change, and credible evidence in those chapters apply to that new context:

- efficiency concerns remain of course paramount, including in remote regions where large, discrete infrastructure projects procured to stimulate economic activity are themselves very costly, have the reputation of often overflowing financially and need to be continuously scrutinised for the soundness of their management as well as their well-recognised corruption potential;
- there are provisions in many trade agreements for the allowance (sometimes with specific conditions) of procurement criteria preferencing minorities and Aboriginal people (who might not be a minority in those regions, but often remain excluded from the mainstream economy), as was the case in the North American Free Trade Agreement for both Canada and the US;
- there is in the context of Aboriginal procurement a central and explicit impetus to employ locals and use skills available (or update skills sets) and spend locally; that pressure is particularly acute in some regions where the notions of spending on local businesses or government services, of employing locals are synonymous in communities’ perceptions to increasing Aboriginal economic participation – although filled with ambiguities that can easily derail efforts to remedy those situations;
- using local SMEs as subcontractors (for major projects) is a key part of linking major projects in remote regions with Aboriginal economic participation goals, where regional spending and employment by those businesses is also expected to support nascent entrepreneurship as regional development authorities attempt to connect and embed locals in project design and procurement conditions;
- improving the socio-economic inclusion of Aboriginal people as a disadvantaged group is clearly central to the rationale behind Aboriginal procurement, whereby its direct objectives might be the integration of Aboriginal workers into major projects (infrastructure, primary resources, government services) or can extend to social and cultural infrastructures.

In fact, it is difficult to divide those aspects from each other in public and political discourse about Aboriginal procurement where the vagueness of objectives critically undermines effectiveness. This signals perhaps that instances of Aboriginal procurement in specific locations appear to entail considerable benefits and opportunities if
all those benefits align well – hence the anticipation that drives proponents early on. But it also means that designing interventions or policies, articulating clear objectives and mechanisms to achieve them, implementing them, building an evidence base, dealing with unforeseen roadblocks, monitoring and evaluating progress will be particularly messy unless clear and transparent choices are made and communicated about what the nature of benefits sought and their relationship to the public interest.

In this chapter we only overview two cases, by taking advantage of a limited number of reports found in and accessed from the public domain related to Aboriginal procurement. We overview the Canadian Procurement Strategy for Aboriginal Business (1996-2006) using the summative evaluation of this relatively long-established and renowned policy which offers useful insights. In the second case, we examine a relatively recent and short-lived attempt to implement a far-reaching Aboriginal procurement approach in a difficult and politically volatile environment in Northern Australia.

1. The Canadian Procurement Strategy for Aboriginal Business (PSAB)

The PSAB was initiated by the Minister of Indian and Northern Affairs (INAC) on March 29, 1996. It had been developed in response to the under-representation of Aboriginal businesses among firms that were seeking and winning federal government contracts. The two main references on which the review and analysis below are based are:


The strategy’s main objective was to assist Aboriginal business development by increasing Aboriginal business participation in the awarding of contracts by federal departments and agencies. It applied to all federal departments and agencies designated as departments for the purposes of the Financial Administration Act and included three main activities aimed at promoting Aboriginal business participation in government procurement:

- set-aside contracts for competition by Aboriginal businesses;
- means to encourage federal departments to increase their purchases from qualified Aboriginal firms; and
- means to increase the awareness and capacity of Aboriginal firms to participate in federal contracting opportunities.

These constituted endorsed exclusions from the North American Free Trade Agreement (NAFTA) and from the World Trade Organization on Government Procurement (WTO-AGP), which provide for ‘set aside’ for minority and small business, called ‘mandatory set-asides’ (for any contracts for goods and services in excess of $5,000 at the time) and ‘voluntary set-asides’ (for contracts under $5,000 that an agency might want to include).
The summative evaluation aimed at using a wide array of evidence sources ranging from key informant interviews with PSAB program staff and senior procurement officers, a survey of departmental PSAB coordinators, a survey of Aboriginal businesses (that had received contracts under the PSAB), and a survey of departmental material managers. It further included a document review and database assessment including an appraisal of program documentation and departmental performance reports, complemented by an analysis of data surrounding Aboriginal procurement provided by Public Works and Government Services Canada.

Despite this comprehensive array of sources, the evaluation key findings are relatively modest and predictable in their tone and reliability. They are reported below with our own comments.

<table>
<thead>
<tr>
<th>Extracted from the report</th>
<th>Comments</th>
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<tr>
<td><strong>Rationale</strong></td>
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<tr>
<td>Government stakeholders who participated in the evaluation generally continue to support the PSAB’s rationale and objectives; however, the response rate among material managers was low, suggesting that support may not be as widespread as was suggested by the data obtained. There is more support for increasing opportunities for Aboriginal firms in other markets, and for increasing the number of Aboriginal firms competing for federal contracts, than for goals such as increasing the value of contracts awarded to Aboriginal firms, which could, in part, be a reflection of the fact that the number and value of contracts awarded to Aboriginal firms has increased dramatically since the inception of the PSAB, making for a different policy context than when the Strategy was implemented over a decade ago. Interviews with PSAB program staff suggest a desire to move beyond the PSAB by helping Aboriginal firms that have benefited from the Strategy to continue to grow without relying solely on contracts set aside under PSAB.</td>
<td>Given the unequal distribution of stakeholders that responded, it appears that: - bureaucrats supported the policy; - procurement and program staff either did not respond or appeared to believe that Aboriginal businesses should move into commercial private sector markets rather than depend on government contracts.</td>
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<tr>
<td><strong>Design and delivery</strong></td>
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<td>A number of stakeholders suggested that there are not adequate means of enforcing compliance with the PSAB, given that there are no institutionalized consequences for departments that fail to set-aside contracts under the PSAB or that fail to achieve their performance targets. The data indicate there are discrepancies across departments in terms of the amount of time devoted to the PSAB, the use of PSAB set-asides, and the perceived level of awareness of the PSAB required among material managers. Some stakeholders also indicated that the eligibility</td>
<td>Outputs unequal; - compliance not enforced and unequal departmental participation; - awareness lacking in some areas.</td>
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requirements of the PSAB are unclear – particularly the Aboriginal content requirements – and that they are in need of further clarification. Survey and interview data suggest that many material managers and senior procurement officers are not highly familiar with the requirements and/or are unaware that the requirements had recently been clarified. While it is clear that only a minority of audited firms are found to be non-compliant, the consequences of non-compliance are unclear and are not institutionalized, suggesting that potential exists to strengthen the enforcement and transparency surrounding the audit process.

**Impact/Success**

While it is evident that both the number and the dollar value of contracts awarded to Aboriginal firms has increased since the inception of the PSAB, there is little data that speaks to the achievement of other expected impacts, particularly the expected indirect impacts. Aboriginal businesses indicated that the PSAB had a positive impact on such things as their ability to compete for federal contracts and also the number and value of contracts awarded to their firm. They indicated that the PSAB had less of an impact upon investment in their firms as well as their ability to develop product lines to meet demands. Many were unable to assess the impact of the PSAB upon Aboriginal businesses and Aboriginal communities, in general. PSAB program staff, in particular, were concerned with the lack of impact data available. They indicated that additional data should be systematically collected to assess the PSAB’s impact, including the number of jobs, training and apprenticeship opportunities created; as well as whether, and to what extent businesses have been able to expand; the number of employees who have been hired who were previously on social assistance; whether, and to what extent, sales and profit margins increased; and whether the businesses can now access opportunities in the international marketplace. The survey data suggests that in a minority of firms, there has been some degree of job creation as a result of the PSAB.

- Main output lies with contracts awarded (but no assessment of their cost, reliability, quality, etc.) – businesses refer positively to outputs (procurement numbers and value only)- real outcomes absent;
- No outcomes demonstrated or based on evidence for such a key policy lasting 10 years;
- Aboriginal businesses and communities state that had minimal impact on their investment, product development;
- Comments on absence of evidence and evaluation strategies by PSAB staff themselves.
Lessons learned and future directions

Survey data from material managers and PSAB coordinator indicates that finding Aboriginal firms with the appropriate capacity to undertake particular government contracts remains a significant challenge. Interview and survey data suggest this is due to the lack of an accessible list of prequalified suppliers, and gaps in capacity in particular fields, such as the medical, architectural, engineering, and surveying fields, and the skilled trades. PSAB program staff recognized a need to build Aboriginal capacity in certain areas and see the implementation of an Aboriginal benefits strategy as being important in this regard. Under such a strategy, an Aboriginal benefits requirement would be included on large contracts whereby contractors would be required to demonstrate some commitment to benefiting Aboriginal people in order to be awarded these contracts, through, for example, the establishment of a scholarship program, the creation of jobs for Aboriginal people, or a commitment to acquire materials and supplies from Aboriginal vendors. Program staff believe the Aboriginal benefits strategy should be implemented in conjunction with, rather than as a replacement to, the PSAB, as they see the PSAB as an important means through which new and emerging Aboriginal businesses can gain experience.

- Rather than Aboriginal businesses being motivated to compete, there were insufficient bids and government employees had to run around and seek capable businesses, which was impossible in some sectors;
- Capacity, training, more facilitation – the fact that these activities have not occurred or were never driven by Aboriginal firms suggests that economic readiness and/or willingness to participate has not improved much.

It is interesting to contrast these summary findings with the expectations that existed a decade earlier regarding the impacts of the PSAB. These were listed in a program logic table (table 2 of summative evaluation; sourced from interim Evaluation of the Procurement Strategy for Aboriginal Business, 2002), also reproduced below in a modified form just below.

<table>
<thead>
<tr>
<th>Objective and expected impacts of the PSAB</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Stated objective of the PSAB: to assist Aboriginal business development by increasing Aboriginal business participation in the awarding of contracts by federal departments and agencies.</td>
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<tr>
<td>Expected direct impacts of the PSAB:</td>
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<tr>
<td>- increase number of contracts with Aboriginal firms</td>
<td>Output</td>
</tr>
<tr>
<td>- increase value of federal contracts (set-aside and regular process) with Aboriginal businesses</td>
<td>Output</td>
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</tbody>
</table>
- increase number of Aboriginal firms competing for and winning contracts
- increase investment in Aboriginal firms and business start-ups
- enhance capacity of firms through skill transfer
- increase partnerships between Aboriginal and non-Aboriginal businesses

**Output**
Measurable outcome (results in main report based on interviews not data)
Outcome often intangible, but could be documented
Output/outcome (durability would be the significant aspect)

**Expected indirect impacts of the PSAB:**
- increase sustainable employment
- increase opportunities in other markets
- develop product lines to meet new demands as above
- lead to positive socio-economic impacts, including reduction of dependency on social assistance.

Should have been measured
Should have been documented
Should have been documented
Should have been monitored
Should have been explored

Much of the evaluation consists of views from stakeholders based on their perceptions of the rationale and objectives of the PSAB, of its outcomes and whether it remains needed. These lengthy descriptive results are mixed at best given that most respondents concur that the most important outcomes or impacts have not been measured or documented (and many suggest improvements are likely to have been modest) yet the majority believes the policy is still needed – which would appear as an inconsistency unless it is clarified that the majority of respondents had vested interests in the existence of that policy.

The report also includes a lengthy section examining the compliance of various agencies within Canadian governments with the directive, and possible reasons for unequal performance at that level, including the clarity of the guidelines, awareness, monitoring requirements and failed compliance mechanisms.

Sections listing unintended outcomes, strength and weaknesses of, and lessons learned from the PSAB are also of interest, although it must be remembered that like the rest of the findings, these are not based on objective evidence or data, but on collated stakeholders’ interviews and opinions.

**Unintended outcomes**

<table>
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<tr>
<th><strong>Shell companies and illegitimate joint ventures</strong></th>
<th>Comments</th>
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<tr>
<td>While some did not think that shell companies posed a large problem, others noted that shell companies are not being</td>
<td>Tricky issue when one of the expectations of the program is to foster ‘partnerships’; it is possible that some were intended</td>
</tr>
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appropriately penalized for their dishonesty | initially to be honest collaborations, but lacking capabilities has meant that they eventually become phoney.

| Reliance upon set-asides- Some program staff noted that some Aboriginal firms have come to rely upon the set-asides, which impedes their growth and productivity gains. | - Important, unintended yet hardly surprising. |
| Small Aboriginal businesses have difficulty competing- It was noted that small Aboriginal businesses sometimes have difficulty competing with larger, more established Aboriginal businesses for PSAB set-asides. | - Very important as indicating possible conflicts between not fully compatible objectives; and possibly that some Aboriginal companies are helped that don’t need it to compete. |
| Confusion surrounding Aboriginal content- A couple of program staff noted that the confusion surrounding how to define Aboriginal content had been a negative unintended outcome. | - Politically sensitive and also at the crossroads of different objectives; linked to issue of shell companies, linked to local growth objectives, etc. |
| Frustration with government bureaucracy- A couple of program staff noted that one negative intended outcome was frustration with government bureaucracy on the part of Aboriginal businesses. | - On the one hand, very plausible; on the other might be an offshoot of ever-dependence on public procurement; in which case this is a bit unfair. |
| More positive relations between the federal government and Aboriginal businesses- A couple of program staff indicated that a more positive rapport between government and Aboriginal businesses had developed as a result of the PSAB. | - Not very meaningful as a finding. |

Many of the ‘unintended consequences’ were surely unwanted, but not surprises to policy-makers; in fact some of them are clearly signs that relaxing competitive pressures on some groups does not necessarily result in them becoming competitive as is well recognised in different contexts; they might either under-perform (references above to lacking capabilities, blaming the bureaucracy and becoming reliant on their procurement advantages) or feel they have become victims of questionable or predatory behaviour (opportunistic shell companies or others doubtfully qualifying as Aboriginal). The next table presumably seeks critical assessment of the policy scope, design and/or relative workability.
Strengths and weaknesses of the PSAB

**Strengths of the PSAB** are:

- that it has allowed Aboriginal businesses to access federal contracts and develop partnerships with non-Aboriginal businesses;
- that it is government wide;
- that INAC advocates on behalf of Aboriginal businesses, that it helps create employment, which benefits communities;
- improved Aboriginal businesses capacity to win contracts;
- that the policy is straightforward and easy to understand.

**In terms of weaknesses,**

- that some government employees are still not fully aware of the PSAB;
- that departments are able to set their own targets, which are often too conservative;
- that participation is essentially voluntary given that there are no real means of ensuring targets are met;
- that there remain some ambiguities in the policy (such as those surrounding Aboriginal content);
- that there is still a lack of Aboriginal capacity in some fields (such as engineering and medical);
- that Aboriginal businesses may become dependent on PSAB set-aside contracts;
- that small Aboriginal companies may have difficulty competing with larger Aboriginal businesses;
- lack of a pre-qualified supplier inventory;
- lack of awareness of the PSAB and its developments among certain managers and staff due to insufficient promotion and marketing activity; and,
- lack of data on the impacts of the PSAB.

**Comments**

- Based on opinions about aspects that were not verified, scope OK;
- View that INAC does much of the advocacy on the behalf of Aboriginal business is perhaps positive, but also perhaps an impediment to developing those capabilities themselves.

- Linked with ambitious admin scope, but apathetic target setting and enforcement;
- Aboriginality as a criterion, and capabilities for some sectors;
- Dependency and limited competitive advantage or productivity gains – although small businesses are always at a disadvantage against large ones;
- Information about the program;
- Absence of impact data.
The strengths seem mainly to refer to its wide scope (yet it was simultaneously criticized for having been ignored by some and unable to actually impose itself in many areas) and for achieving outputs (it is unclear whether precise targets across the board were attained but appears so). The weaknesses have to do with looseness in setting targets, definitional and implementation ambiguities, absence of data, no real discussion of outcomes. Another section of the report examines lessons learned.

Lessons learned and suggestions for improving the PSAB

Program staff suggested implementing an Aboriginal benefits requirement for large contracts. They also indicated the need to clarify the 33% Aboriginal content requirement. Other suggestions included improving communication between suppliers and departments to ensure suppliers are aware of how to access contracting opportunities, establishing a forum through which Aboriginal businesses could exchange information and provide feedback on the PSAB, and establishing mechanisms to limit dependence upon the set-asides (e.g., by establishing a maximum number of contracts firms would be allowed to acquire in this way). A couple suggested linking achievement of departmental targets more closely with the Departmental Performance Reports (DPR) process and performance pay. It was noted that, in the past, federal contractors were not provided with training on the PSAB, but, in the future, training on the PSAB and Comprehensive Land Claim Agreements (CLCA) will be mandatory for designation as a certified purchaser within the federal government, which is expected to improve the effectiveness of the Strategy.

Senior procurement officers suggested undertaking more promotion of the Strategy and of Aboriginal firms with capacity. One person specified there should be more promotion and information sessions of PSAB for program-level staff, who often identify suppliers and can award contracts up to a certain amount. Lost opportunities for Aboriginal suppliers result. When these individuals are unaware of the PSAB, other suggestions included establishing a prequalified list of Aboriginal suppliers; implementing better reporting on the impacts of the PSAB; providing more information to suppliers to ensure they understand the bidding process; clarifying ambiguities on the application and interpretation of the PSAB (such as the relationship between PSAB and CLCAs); and, improving the audit process.

Half of PSAB coordinators did not offer any suggestions for improving the PSAB. Suggestions made were: more staff training/awareness-raising (25%); more promotion of Aboriginal businesses (18%); an up to date supplier list (18%), and more audits and compliance activities (11%).

Businesses indicated the need to train departmental staff in the PSAB and encourage them to promote the Strategy more (30%). They also suggested the need for a fairer allocation of contracts (16%), for Aboriginal partners to have more authority (12%), and for the number of projects administered under PSAB to be increase (10%).

Most material managers (65%) did not take the opportunity to provide additional comments on the PSAB. For the most part, comments provided were aligned with those provided by PSAB coordinators and
Aboriginal businesses, with 12% noting the need for more data surrounding qualified Aboriginal suppliers and 7% indicating a need for more training.

Many of the recommendations may be specific to Canadian bureaucratic structures and procurement systems although they would likely affect any such overambitious policy attempting to reach across all agencies characterised by different goals, cultures and concepts of what it means to deliver services properly, timely and effectively. They target weaknesses arising from [1] the limited ability of the policy to reach some areas of government, communicate its rationale and ensure compliance and [2] address definitional ambiguities, [3] address data, skills, capabilities deficiencies, and in some cases [4] limit the amount of procurement activity for some businesses (to redress excessive dependence). A list of perceived impacts of the policy (again not based on data but stakeholders’ perceptions) follows.

### Impact/Success

While it is evident that both the number and dollar value of contracts awarded to Aboriginal firms has increased since the inception of the PSAB, there is little data that speaks to the achievement of any of the other expected impacts, particularly the expected indirect impacts. Aboriginal businesses indicated that the PSAB had positive output results expressed in terms of their ability to compete for federal contracts and the number and value of contracts awarded to their firm.

They indicated that the PSAB had had less of an impact upon investment in their firms and their ability to develop product lines to meet demands. Many were unable to assess the impact of the PSAB upon Aboriginal businesses and Aboriginal communities generally. PSAB program staff in particular were concerned with the lack of impact data available.

They indicated that additional data should be systematically collected to assess the PSAB’s impact. This should include the number of jobs and training and apprenticeship opportunities created, as well as whether and to what extent businesses have been able to expand, the number of employees hired who were previously on social assistance, whether and to what extent sales and profit margins increased, and whether the business can now access opportunities in the international marketplace. The survey data suggests that there has been some degree of job creation as a result of the PSAB in a minority of firms.

The Canadian report concludes in a way that is very commonly observed for such programs:

1. By showing that proper evidence was never collected (again over a 10 years duration during which interim evaluations occurred which must have all have protested about the lack of data, and during which a program logic had been set!); and,
2. By feeling confident that the program was useful and asserting but never demonstrating that it was a good use of taxpayer money because a number of survey respondents who were involved as stakeholders in its management or as clients supported it.

Considering that the above disappointing findings belong to the summative evaluation endorsed by the agency in charge of Canada’s PSAB, that it was made public and that it could not demonstrate any positive outcomes (or intent by the agency to document historical improvements), it is very difficult to understand why that decade-long social experiment has had such a good reputation among other governments in faraway countries (such as Australia), and inspired later facsimiles.

Mah’s (2014) report revisits some of these issues. Some useful details are provided about the INAC definition of a PSAB Aboriginal business which are important because of the way it has inspired other jurisdictions.

**PSAB Aboriginal businesses may be sole proprietorships, limited companies, co-operatives, partnerships, or not-for-profit organizations, though all must meet the specific requirements stipulated by INAC (2007, p.21):**

- At least 51 percent of the firm must be Aboriginal-owned and controlled.
- If the business has six or more full-time staff, at least one-third must be of Aboriginal descent.
- At least 51 percent of the joint venture/consortium must be owned and controlled by an Aboriginal business or businesses, as defined above. If there are six or more employees working for the joint venture/consortium, at least one-third must be of Aboriginal descent.
- If an Aboriginal supplier or the joint venture subcontracts part of the requirement, the Aboriginal component of the work must be maintained. Contractors must certify that an Aboriginal firm will conduct at least one-third of the value of the work performed under the contract. (Mah 2014)

In a number of instances, Mah (2014, p.69) refers to sensitivities (which perhaps come close to political correctness) favouring the use of procurement to achieve some objectives. This occurs when it is stated that ‘governments may not always want to be seen as giving handouts to Aboriginal communities’ and trying ‘to encourage Aboriginal prosperity and wealth creation without the use of coercive regulation, such as new funding rules, which could insult communities. Instead, procurement policies put the onus entirely on Aboriginal businesses themselves to seek out contracts’. This is important for two reasons:

1. The absence of data and other evidence that might show that little has changed in terms of the ability to compete, readiness to take advantage of opportunities, and scarcity of examples of product development, business diversification or dispersion into new private markets is exceedingly problematic. It might be due to both reluctances to admit policy failures (despite the fact is ‘has been lauded a success and since its inception has awarded over $3.3 billion worth of contracts to qualified Aboriginal businesses’) and due to the fact that despite awarding so many contracts, no progress in business or capabilities have been documented. But it could also now be due to an inability to confront the deeper causes of economic exclusion and the shared responsibilities that exist around those. And,
2. The temptation to utilise procurement to effectuate wealth transfers that are less ‘visible’ or more difficult
to document (as well as near impossible to evaluate – conceivably conveniently) might open up an
expedient way to cut visible handouts and replace them with lucrative government contracts less visible to
the public, and suiting specific interests.

Curiously, Mah (2014, p. 71) argues that the ‘PSAB’s procurement policies […] were implemented to tackle the
specific problem of federal contracts not being regularly awarded to Aboriginal businesses’ and that other issues
(such as discrimination and poverty) were subordinate, therefore that it is fair to call it a success (?). This is
disingenuous when it can easily be shown that community support for such policies is not based on a great public
concern about procurement unfairness, but largely linked to the majority (in relevant communities) desiring to see
Aborigines having greater opportunities to participate in the economy. The assertion above, which thrusts aside
the need to show that ‘things are changing’, is even stranger given the prior observation that using procurement
was becoming a deliberate strategy to redistribute wealth. Furthermore, the formal evaluation did refer to
previous ones that included a program logic which contained both direct and indirect impacts (which were
reproduced above) and were intended to be the real test of the policy intent.

One aspect that is strangely untouched in the various reports or accounts of the PSAB is whether (and by how
much) the quality/unit of cost ratio for the $3.3 billion of goods and services supplied by Aboriginal businesses has
been affected. Our review has shown that all cases of ‘preferencing’ (not specifically Aboriginal, but any of local,
SMEs, minorities, etc.) decrease the public value of the services (or increase the price to beneficiaries). This is not a
prejudiced observation, as it is based on the logic that if it had not been the case, then no redress discrimination
would be needed (contracts would flow to all, including disadvantaged groups), and was backed by empirical
evidence in a number of cases. Given the concerns about the capabilities of potential suppliers that stakeholders
interviews have revealed, this is a reasonable interrogation. Even more important and perturbing is the fact that
making those calculations (for such a large and important project and a large amount of wealth transferred)
appears elementary, and has not been attempted or at least is not mentioned in the reports available. Ascertaining
the size and evolution of the efficiency loss would have been feasible for authorities who receive bids from all
origins and can therefore compare what’s been on offer, and eventually contrast that to the redistribution benefits
achieved.

In the end, Mah (2014, p. 77) concludes with general observations on the use of PSAB as an example of a policy
tool that might regrettably be threatened:

• **First**, that the use of procurement to affect positive social change within Aboriginal communities marks a
trend towards decreased government involvement and a smaller state and thus, a smaller policy toolbox.

• **Second**, an argument could be made that international agreement regulations could override any
preferential treatment given to Aboriginals, which would render domestic procurement strategies impotent.

• **Lastly**, one could argue that Aboriginal procurement policies are not a new instrument for the toolbox, and
that they merely constitute one of a decreasing number of tools surviving the downsizing of the toolbox.

Like other academic discussions before, seeking to use procurement is interpreted as a reaction against decreasing
funding buckets that have in the past been used to redistribute wealth, against globalisation (trade agreements in
particular) – and the focus in that analysis is ultimately on ideological positions rather than whether theory and evidence produced judgments about effectiveness and credible benefits.

2. **Recent Aboriginal procurement undertakings in the Northern Territory**

**Australian context**

We briefly set the context of Aboriginal procurement in Australia by first making general observations about the generic issues surrounding efforts to establish new principles to administer Aboriginal public procurement, and the reasons behind the perceptions that new ground rules had to be introduced. While much of the discussion that follows is about the Northern Territory (NT) Aboriginal procurement experience, the stylized observations below precede the case study and reflect a fairly widespread Australian perspective, the core elements of which are applicable across jurisdictional levels, from national to local authorities:

- **MOTIVATION**: Aboriginal procurement policy redesign has been driven by a political undertaking to address what is perceived as a complex/wicked social problem (inadequate socio-economic participation by Aborigines and ensuing gap in wellbeing indicators) embodying a disparate assortment of objectives connected to an ambiguous theme. Most critically intuitive interventions (with some inspired by the Canadian so-called success) have been proposed by policymakers desperate to be seen addressing issues; and they’ve been designed ahead of the formulation of a persuasive theory of change (or program logic if adopting an evaluation terminology) – which means that no one spelled out what changes exactly (beyond ‘getting more procurement contracts’) were expected, when, where, benefiting whom, etc. That is, the desire for change has been the key driver behind the policies, but the question of ‘how’, in particular the ability of bureaucracies, institutions and policies to transform people, communities and their settings (and at what costs to whom) is left aside, almost deliberately, as a question to be assessed in time.

- **IMPLEMENTATION**: Procurement is often identified as a convenient institutional mechanism to experiment with the provision of incentives to undertake socio-economic transformation, in part because it is seen as flexible, invites other non-government sectors to participate (and share risks and responsibilities) and because it is ‘semi-transparent’ as a bureaucratic entity. There is an enduring central and often unwritten contradiction between the conventional objective of providing an identified primary service efficiently (framed as ‘value for money’ in chapters 2 and 3) and a secondary-alternative goal (such as enforcing Aboriginal participation in a local project for instance); as was featured in ‘type 2’ social procurement models (discussed in chapter 6) resulting in administrative ambiguity about priorities.

- **INHERENT AMBIGUITY OF PURPOSE**: The contradiction noted above leads to arbitrary decisions (and murky decision processes within the establishment of procurement rules and actual decisions), likely in turn to feed stakeholders’ suspicions (from either private sector and Aboriginal communities) about government true purposes, generate costly legal disputes (discussed in chapter 4 as an expected outcome of insufficient transparency), creates political uncertainty as is perceived in the community as clashing agendas. As a recent example, those issues arose around remote housing in the recent ‘Closing the Gap’
implementation where closely connected agendas became regularly confused: That of effectively renewing remote housing stocks (an inherently costly and logistically challenging endeavour) and employing as many locals as possible in the process. Past efforts have been strongly criticized in past reviews and evaluations of the Closing the Gap era both for [1] various projects’ lack of contribution to local jobs (the then relatively novel agenda of employing local/Aboriginal businesses and workers) and for [2] their overall poor value (quality & timeliness)/cost performance, where some argued that importing much of the workforce and other capabilities would have been the cheapest approach. Given the unwillingness to confront the possibility that a major tension existed between the two objectives (not to be embroiled in politically incorrect arguments, or facing possible for political correctness reasons), both government agencies and suppliers make the ‘political decision’ to ascertain that both goals are not a priori in conflict and that involving more locals might lead to greater efficiency and better targeting of local needs, etc. It is indeed easier to blame bureaucratic incompetence, than properly evaluate competing approaches, identifying the extent of the capabilities actually available, and demonstrating the true costs of providing those services in remote regions.

• **NORTHERN AUSTRALIA CONTEXT**: The objective of employing Aboriginal workers or engaging Aboriginal firms (where exact definitions are always problematic) is particularly relevant for the NT (but also often implicit in other jurisdictional policies, in particular Queensland) with the alleged wisdom that buying and spending locally is key to economic development – this logic is equally driving much current anticipation regarding the potential of public procurement to salvage struggling regions from cyclical or structural economic decline. The identification and targeting of Aborigines as ‘policy clients’ suffering from well documented disadvantages (as in the post-Closing-the-Gap era) aligns fittingly on the surface with similar Australia-wide policies such as ‘social procurement’ (chapter 6) as well as the Aboriginal economic inclusion agenda; noting that many of the currently promoted Aboriginal procurement views spreading in all Australian jurisdictions have pre-existed in different forms in specific regions, and were overall reassessed as part of the Forrest Review (2014);

• **ABORIGINAL BUSINESS CLASS**: Addressing the long-standing goal of creating an Aboriginal business class by supporting certain types of businesses through procurement (defined by their size, sector, main location of activity, status of clients and/or their ownership or employee structures) has not really been historically successful in Australia, although the evidence is mixed internationally (see chapter 5). Many Indigenous businesses have existed (especially around urban capabilities), been successful and grown on their own grounds (to become large rather than SMEs), not because of preferential policies but because they established true competitive advantages. Designing public procurement to target and advantage further enterprises (businesses with significant Aboriginal involvement) in northern and remote regions usually needs to focus on remote and smaller firms, which might clash with those established ones, as discussed in chapter 5;

• **POLICY CYCLES**: The Australian policy climate is subject to recurring political cycles with periods during which the focus on minimizing red tape is dominant. Aboriginal procurement creates specific concerns due to significant risks of political interference, system-wide transaction costs (linked with contractual disputes
and remediation) as well as the need to maintain positive perceptions regarding the integrity of the public administration in charge and the checks and balance needed when positive discrimination becomes institutionalised. The hypothetical solution presented to these serious apprehensions always involves investing in quality monitoring, evidence and evaluation processes (always emphasized and never setup or undertaken). In fact these essential activities can be undermined by those who want to avoid them through arguments that they constitute unnecessary red tape; governments of all convictions being typically more concerned with immediate political risks than with long-run learning about, or demonstration of, policy effectiveness.

**Northern Territory case study**

The initial focus on the Northern Territory stems from recent attempts to forge ahead with an economic policy framework in which public procurement is deliberately called upon to redress important structural imbalance and address enduring inequalities. This section does not undertake a theoretical assessment of those directions, nor does it attempt to evaluate past and present public policies which are reported in some of our references. Nor does it attempt to construct a history of procurement directions which would require access to abundant detailed information (held by government agencies themselves) and would entail the gathering of much contextual knowledge surrounding the driving forces behind the policy, and the political contexts that led to changing policy directions at specific points in time. We only extract ‘issues’ identified predominantly in publically available reports generated by NT government agencies (including some consultants appointed to review the policies). This allows us to broadly appraise a recent, ambitious and now defunct attempt to transform Aboriginal economic participation through public procurement interventions.

Most other documents available in the public domain are relatively descriptive and aspirational and never evidence-orientated. A well-known difficulty arising when relying on grey, government-produced literature is to determine the timeliness of the various documents found and establish their validity in fulfilling specific roles in government administrative systems. The proliferation of disparate and disconnected documents referring to past, present or intended policies is sidestepped in this case study, as the following approach was adopted:

- We first must flag (based on our initial stocktake of documentation and diverse sources) that no best practice has yet emerged in this field. The new wave of public procurement policies attempting to address multifaceted socio-economic issues surrounding Aboriginal participation appears to have responded to popular beliefs, by embarking into crudely developed policy frames and struggled with similar conceptual challenges across jurisdictions. They seem to have embarked in comparable implementation trials, which mainly established their ability to ‘pass on’ government procurement contracts to firms fitting a given definition of ‘Aboriginal procurement’, the nature of the evidence being limited to crude outputs rather than outcomes;

- We focus our attention below on a few sources found in the public domain which themselves entail some critical exploration or analysis of the state of play surrounding the policy. These had privileged access to government data, stakeholders or reporting, and in some instances undertook to review trials and errors that have shaped public procurement approaches. Our primary material for this review includes therefore
the more verifiable and sometimes conjectured findings from those reports, as well as many of the telling challenges those evaluations encountered. Again, insufficient evidence exists to corroborate whether actions, outputs and/or outcomes actually matched stated intentions, but we can scrutinise their framing, coherence and clarity, based on what previous review chapters have uncovered; and,

- We seek to expose general principles that might help framing or guide future developments by Australian States and Territories in that especially thorny procurement domain.

**NT context of Aboriginal public procurement**

The question of ‘when’ public procurement first became considered as a possible lever to achieve specific economic inclusion objectives for Aborigines in the NT is of interest because it might help us identify the background logic behind that approach, from the expected course of action, to the emergence of outcomes and some inherent conflicts within it. Both the grey and academic literatures provide a number of clues that we use to develop working hypotheses to explain the recent and rather sudden interest in using public procurement to fuel social and economic transformations and favour Aboriginal communities:

- **POLICY CIRCLES**: It might have been influenced by widespread shifts in viewpoints held within policy circles regarding the previously unconventional wisdom of using public procurement to address targeted economic or social objectives, beyond the conventional and strict delivery of mandated goods or services on behalf of government agencies or bureaucracies to their citizens – in particular from the international aid sector;

- **POLICY FAILURES**: It might partially have been born from public disillusion with the standard, government-pushed, approaches to ‘close the gap’ based on traditional public funding and government roles (education, health, safety, welfare, economic development support, etc.) in terms both of their ineffectiveness and considerable cost;

- **PUBLIC DISCOURSE**: The rejuvenated focus on the benefits of ‘employment’ in public discourse (based partly on research; as for the statistical associations linking work with other life outcomes - see Hancock & al. 2013, Gray & al. 2014, Zubrick & al. 2006) might have played some role; given that public employment and public procurement constitute dominant economic activity sectors (particularly in remote regions) might have contributed towards perceptions about their potential as powerful levers to influence economic engagement;

- **INDUSTRY SUCCESS CLAIMS**: Reported statements in various industrial sectors particularly relevant to remote regions might have played a role in suggesting that some industries were more effective than others in supporting Aboriginal economic participation. The mining lobby, with both private and public stakeholders, has claimed to have achieved relative success in attracting and employing young Aborigines and impacting on their immediate and possibly future economic prospects (depending on their pre-existing engagement with work) while construction companies involved in infrastructure develop as well as the SIHIP-type housing projects have proposed distinct approaches to assist remote workers; with mixed results and suggested lessons learned (Forrest Review 2014).
• DEALING WITH A GOVERNMENT SERVICES ECONOMY: Although Northern Territory regions differ, it has become increasingly recognised that the NT economy is made up of many of regions fundamentally predicated on government control, support, and overall institutional dominance (quite dissimilar from mainstream-mixed economies in the southern part of Australia), which means that the main lever for change is the bureaucracy itself (although paradoxically it is also the main problem); and,

• CAPABILITIES STAGNATION: The NT has had a long history of circular mismatch between training investments and restricted employment opportunities in many regions resulting in the view that local skills can be acquired and maintained only if directly connected with sustainable work prospects, which requires some concerted action. Public procurement was envisioned as the mechanism through which a better synchronisation between demand for foreseeable services (an ongoing necessity in remote regions) and training in places where market institutions are lacking would occur.

A priori, all of the above constitute plausible conjectures, which might jointly explain the recent appeal of using public procurement in new ways (yet not properly tested and still unproven) to address new wicked problems. In the case of Aboriginal procurement in the NT, it is interesting to note how only very recently these proposals have emerged:

• In a partial survey of almost a decade of ‘Closing-the-Gap’ documents (including all Prime Minister’s or delegated agency annual reports), public procurement was never mentioned until the most recent years. Previous references to procurement were formulated only in the context of the need to improve government delivery and processes, for instance when dealing with remote Aboriginal housing – no references were made to employing locals or Aborigines. Remarkably, using public procurement as a strategy or pathway to facilitate economic inclusion or greater Aboriginal employment had not been considered seriously in reports prior to 2013, and did not appear in documents extracted from the late Australian Government Closing the Gap (CtG) clearinghouse. In the 2013 CtG Prime Minister’s report, the notion of facilitating access by Indigenous businesses across Australia to Australian Government procurement funding is mentioned among a suite of initiatives (AG 2013). In subsequent CtG reports (2016 and 2017), reference is made to the ‘Indigenous Opportunities Policy’ applicable to Australian Government procurement processes worth more than $5 million (or $6 million for construction) where the main activity occurs in regions with a significant Indigenous population. It is tentatively claimed in those documents that the purpose is to encourage ‘diversity’ and addressing employment gap. It also refers to exemptions for SMES at least 50% indigenous owned, allowing government agencies to bypass a full tender.

2 The CtG report was reiterating the intentions stated in the Commonwealth’s Indigenous Economic Development Strategy Action Plan 2010–2012 (AG 2010) also found in the Indigenous Economic Development Strategy 2011-8 (AG 2011), noting that the latter mainly referred to objectives, and to the need to investigate procurement models that provide more direct contracting opportunities for Indigenous suppliers, as well as work with the States and Territories to achieve this – but without any significant work program in place at the time. Nor was it targeting remote regions at that time.
process, on the condition that the procurement represents ‘value for money’\(^3\) (applicable to any procurement over $80,000). References to ATSI employment targets for government procurement appear in the 2016 report (AG 2016) which depicts the Government’s Indigenous Procurement Policy that started on 1 July 2015 as aiming ‘to significantly increase procurement from Indigenous businesses’, the few paragraphs on the topic providing some early examples, intended procedures, without much details about the hoped-for outcomes. A higher level of aspiration appears in the following statement:

*The policy puts Aboriginal and Torres Strait Islander businesses at the front and centre of the way the Government does business whether through direct contracts or through joining the supply chains of some of Australia’s largest companies (AG 2016, p.336).*

In the latest 2017 Closing the Gap Prime Minister’s report, some indicative figures are flagged regarding Indigenous businesses and Commonwealth contracts that demonstrate that the policy is notionally in place and suggest that some early successes need to be celebrated, although it also recognises that targets set in the policy were not being met.\(^4\) That report adds that State and territory governments have agreed to explore similar policies in their own jurisdictions and the Indigenous business sector will continue to grow, suggesting that the Commonwealth played a leading role. The incredibly sudden and perhaps excessively keen inclusion of Aboriginal public procurement as an approach to address widespread social and economic inclusion issues is indeed noteworthy.

- In the NT specifically, our preliminary review included an overview of the content of publically available discussions that have taken place over the years around various instances of the NT Indigenous Economic Forum (since 2005), as well as associated strategies often presented or discussed around those events. Two worthy references ought to be mentioned here. Firstly, in the 2005 NT Indigenous Economic Development Strategy, John Ah Kit (as Minister for Community Development and Minister Assisting the Chief Minister for Indigenous Affairs) suggested that ‘procurement decisions taking into account the benefits of capacity building and remote area employment’ would be desirable but does not provide much more detail at the time. In a presentation entitled ‘From buggered up to building up: developing functional communities through economic activity’, Ah Kit (2007) later appears as a precursor when he presents government procurement as one of six key strategies to achieve ‘real outcomes’, especially in the area of construction and civil works. He refers to informal agreements between the NT and Australian government to target Aboriginal workers in NT housing projects, link those to training, and eventually extend beyond housing and construction. In his plausibly visionary statement, much of that work would eventually involve private sector businesses enmeshed in the key supply chains and themselves becoming drawn to involve

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\(^3\) Noting that the purpose of the procurement process is to ascertain value for money, so that the logic of this statement is questionable, and the lack of details not surprising.

\(^4\) With new policies of that type, any procurement contract ‘going through the policy’ channels can be portrayed as an ‘achievement’. Yet it is reasonable to presume that many of the successful businesses fulfilling those conditions (across Australia) would have already been competitive (irrespective of any policy) and able to win such contracts using conventional channels therefore, the impact of the policy cannot be determined by such simplistic data.
Aboriginal Territorians, due to incentives allowing them to win contracts by demonstrating their contribution to the NT in that way.

The logic of Aboriginal procurement: Stated objectives, measures, theories of change?

Having noted the short and tentative history of those policies in Australia, the lack of clarity regarding their early implementation and the rapidly evolving set of rules governing them, this section focuses on the recent experience of the now defunct Indigenous Employment Provisional Sum (referred to as “IEPS” hereafter) managed by the Department of Infrastructure, Planning and Logistics of the Northern Territory Government (NTG). We rely almost entirely on 2 key public documents from which stylized observations about policy intentions, implementation, and achievements were derived:

- The report by the Auditor-General for the Northern Territory to the Legislative Assembly (November 2017) which includes a substantial discussion of the IEPS;
- The independent evaluation by KPMG of the IEPS & Remote Contracting Policy (RCP) for the Department of Trade, Business and Innovation (final report 15 December 2016)\(^5\).

These will be referred to respectively as the AGNT and KPMG reports. The different concerns and scopes are well described in the two documents, with the AGNT exploring the historical linkages between the former Indigenous Participation on Construction Projects Policy and subsequent IEPS, while the KPMG report relates stakeholders’ views and contrasts the IEPS and RCP systems in the short period during which they overlapped. From those distinct perspectives, a number of consistent issues or themes emerge strongly, and convey useful lessons for regional public procurement.

Findings from the Auditor-General for the Northern Territory on the IEPS

The AGNT report first attempts to determine the program’s logic. She notes the shifting nature of statements regarding the purpose of the policies, its early focus on construction projects in remote regions expressed in terms of government objectives or contractual targets (number of tenders, number of trainees, assessment criteria impact, employment and trainee opportunities, etc.) and imprecise suggestions about social or economic outcomes expected to ensue outside those government-managed institutions – making it difficult for the Auditor-General (A-G) to ascertain whether the policy was being put to good use. When a government adopts a new policy direction, some amount of experimentation and swift adjustments in unforeseen directions are somewhat likely. But it is the apparently volatile and arbitrary shifting nature of the purpose of the recent NT public procurement policy which is noted by the A-G, signalling its apparently inconsistent secondary objectives. From that report’s account, changes in directions never really explained, and therefore probably never driven by new understandings of the likely outcomes of the policy. The A-G could not obtain from documents and people consulted any sense of

\(^5\) Downloaded from newsroom.nt.gov.au/api/attachment/ById/10439, May 25\(^{th}\), 2018.
clarity about expectations regarding the general impact of that public procurement framework favouring Aboriginal enterprises or employment. Nor did it reveal much about the link between implementation and process, outputs and any objective-outcomes that analysts could have tried to second-guess. According to the AGNT (and repeated in stakeholders’ comments in the KPMG report), changes appear to have been driven by technocratic and political considerations to manage arising risks and by trying to anticipate the increasing scrutiny from the public this would lead to (which should be a warning for anyone believing that such policies are mainly driven by the public interest), rather than pursuing high-level aspirations.

Technical adjustments of course matter, but changes in practical considerations should have been aligned with, and justified by, ongoing efforts to clarify the anticipated longer-term outcomes of the policy. Otherwise they appear to the public as attempts to shift the goalpost and modifying ex-post the purpose, targets, scope and audiences (determining those who can benefit or not) for the sake of claiming technical success without having ever spelled out any long-term objectives. Furthermore, the history and rationale behind those cumulative changes is never documented as such. This explains how ambitious (well inspired or not) policy directions lose their transformational promise and become trivial additions to existing frameworks or established ways of doing things. It also leads to public scepticism and might in the longer term even undermine the ability to undertake valuable policy innovations.

In the current case, backlash around the policy’s unclear purpose and questionable use came rapidly. The AGNT report refers to a NTG media release (31 May 2017) expressing concerns about ‘potential widespread fraud of the IEPS’ surrounding the new scheme, which called for its suspension. This occurred as the Agency in charge had referred several contractual dealings to NT Police for further investigation. Reflecting at the time on the most basic processes required to supply specific primary goods and services with integrity for the general public, the auditor-general critically notes:

- The performance management system in place to manage IEPS is ineffective and does not enable the Agency to assess whether the objectives of the IEPS initiative are being achieved efficiently, effectively and with economy;
- I am unable to provide assurance that the controls and processes enabling payments to contractors in accordance with the IEPS initiative were appropriately designed and implemented as there were no formal controls and processes in place and I was provided no evidence that there was consistent interpretation or application of the IEPS initiative; and,
- I am unable to provide assurance that payments to contractors were paid in accordance with the criteria applicable to IEPS as the criteria were inconsistently interpreted and applied across different projects / contracts. (AGNT, p.41)

The AGNT’s analysis of the events (with the limited evidence it could access) focuses on its specific mandate to audit government activities and assesses the use and potential misuse of public funds (recognising that changes in governments that took place between the initiation of the policy direction and its implementation create further disruptions in interpretation and reporting). The AGNT report includes a detailed chronology of the IEPS initiative, and documentation, and highlights significant failures in agency processes in addressing and managing what should
have been well-recognised risky activities, following principles of government procurement well-known and described in chapter 2. Public procurement is traditionally a sensitive area requiring strong systems presupposing very real risks of fraud which requires that inconsistent administrative and decision systems must absolutely be avoided. The need for effective and dependable correction mechanisms (to deal with contractual disagreements) must be anticipated and administered through reliable and transparent public reporting. From the mainstream literature on public procurement which has investigated general business and community opinions, these types of risks and procedures are not only well acknowledged, but typically they are part and parcel of government contracting business, in particular for sectors involving major works and projects.

Beyond the fraud element that triggered the urgent policy revision, other high-level risks stemming from the poorly articulated nature of the policy have been identified by the AGNT and are relevant to this overview of critical issues. The AGNT report (p.42) states that the administration of the IEP should have anticipated and worked towards addressing:

- material financial loss arising as a result of misinterpretation of policy requirements;
- not achieving the intended outcomes of the policy;
- inability to measure what impact, if any, the policy is having and consequently making decisions that are inconsistent with the intended outcomes;
- inability to measure what impact, if any, the policy is having and consequently not taking corrective action when required; and,
- incorrect reporting to the ultimate decision-makers within the Northern Territory Government resulting in reputational risk and loss of credibility.

It is difficult to confirm whether the policy had any purpose at all. Some key aspects such as ‘the inability to connect decisions and intended outcomes’ as well as ‘inability to measure impacts’ vindicate the conclusion that both design and implementation were sloppy and premature – and that both the leading proposers and agencies ultimately in charge were not equipped to properly articulate their goals, achieve their objectives, let alone convincingly corroborate this was a good use of taxpayer funds. The AGNT report provides an extensive and detailed list of inconsistencies, incoherent actions, contradictory communications.

The above critique might appear to suggest, as is generally credited, that those failures are mainly due to [a] bureaucratic ineptitude and/or [b] political interference with the administration of the system (this is not directly claimed in the report, but alluded), but this would be an insufficient conclusion for the purposes of this report. For our mandate focusing on the challenges of specific procurement policy directions, it is important to appreciate that the adoption of new and disruptive policy approaches attempting to interact with supply technology (embodying aspects of production, labour force management, industrial dynamics, project administration) to achieve intricate socio-economic community transformations might well be beyond what most bureaucracies are equipped to
It is clear that many agencies were involved and there were hesitations around the question of whether Aboriginal preferencing could be treated as a straightforward extension of existing procurement procedures (given that historical corporate knowledge of interactions with the mining and construction industries). Yet, as is obvious from the Auditor-general’s expectations, extensive resources and capabilities were lacking that would have been needed to articulate, monitor, let alone assess complex (and possibly unpredictable) interactions between industry competitive strategies, mainstream labour participation needs and Aboriginal community reactions, while still delivering on those basic infrastructure projects (the skills required for the latter being with industry).

In this section, we uphold the view that there are fundamental issues arising when attempting to extend the architecture of public procurement beyond its traditional role (‘providing publicly endorsed and demanded goods and services, with value for money’). Extending public procurement mandates to undertake socio-economic experiments in the hope of addressing issues that conventional approaches (led by specialized agencies combining professionals, academic and industry experts) have long struggled with is inevitably ambitious and disruptive. While starting from a public procurement perspective appears benign, this is likely to be over-simplistic. Even Ah Kit’s earlier (2007) multi-plank vision was accompanied by numerous statements regarding the necessary links with training and the need to address other aspects of regional economies (reiterated strongly by stakeholders in the KPMG evaluation discussed below).

While public details are lacking about how the IEPS was actually put together, it would be concerning if such new policies originated from idealist politicians, and subsequently assigned to procurement specialists (within the bureaucracy) who then realised the wicked nature of the policy itself but could not oppose it on political grounds – this would easily explain why no convincing theory of change or articulation of short- and medium-term outputs, let alone more meaningful outcomes or transformation goals, were articulated or measured. The risk failures identified by the AGNT listed above are perfectly consistent with the view that merging conventional public procurement knowhow with design programs to undertake far-reaching socio-economic transformations requires new ways of undertaking policy design, embed broader technological and social knowledge sources and could have significant impact on existing government and business organisational structures. This appears perfectly consistent with the detailed audit undertaken of the procedures that the AGNT claims should have been clearly documented and verifiable around:

1. Policy Development (including assessment; consultation; research; drafting of policy; and approval);
2. Policy Implementation (and its governance structure); and the

Not surprisingly, the issues raised by the Auditor-General related to the second and third phases are numerous and particularly acute, given the basic failures of the first development category. The 40 pages of the section of the

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6 To repeat the obvious but too easily forgotten, the amazingly well resourced and multi-dimensional Closing the Gap policy efforts that took place over almost a decade also had a negligible impact (in the form of intended and objectively demonstrated outcomes) despite mobilizing huge amounts of state-of-the-art social policy skills and resources.
AGNT report focusing on the IEPS clearly show that routine checks and balances were not applied, and commonly expected frameworks not even devised – most likely because few would have known how to do, insufficient resources would have been provided, and no-one would have wanted to be left with the mess. But the philosophical question remains: Could conventional risk management measures be instituted in the context of policies attempting to drive a radical change in direction, through the use of public procurement? Or is it unsurprising that it led to an overly ambitious yet hazy set of objectives, which was never properly subjected to the scrutiny of external experts, industry and professionals who could perhaps have anticipated some of those difficulties and framed it differently?

**Findings from the Independent Evaluation of the Indigenous Employment Provisional Sum (IEPS) & Remote Contracting Policy (RCP) for the Department of Trade, Business and Innovation, by KPMG (Final Report, 15 December 2016)**

The AGNT report focused on government processes and explicitly did not intend to comment on the merits of the IEPS initiative itself (nor predecessors or alternatives), although it clearly established that policy purposes remained murky. The slightly anterior KPMG report went further down the road of trying to establish if and how this could be done and provides complementary substance for this overview. While our comments occasionally question some of the assumptions or interpretations of that report, the intention is to identify issues and assess how universally applicable they might be in the context of contemporary public procurement, and whether explanations provided are plausible. We must do so without having access to the raw evidence on which KPMG based their own analysis, nor a detailed acquaintance with the mandate and implicit scope of KPMG’s evaluation. Without criticizing that work commissioned by the NTG or its overall method, we note that it is light on many key details that would serve the public interest. We proceed by extracting from the KPMG analysis the substantive findings as well as any apparent conceptual or technical difficulties to inform future needs and likely directions, especially those relevant for regional public procurement.

The KPMG report itself establishes early that it is based on a qualitative study undertaken through staff interviews, consultations, case studies and policy reviews. This means that findings hold limited objectivity and generalizability, and KPMG attributes to data limitations the inability to assess local economic impact (p.3). The main findings in relation to both the IEPS and RCP as found in the KPMG executive summary are:

- The overall intent of both policies is widely supported by interviewed stakeholders;  
- There is limited community understanding of the details of the policies, particularly relating to RCP;  
- Of both policies, IEPS has most clearly evidenced tangible outcomes;

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7 We note that while the report describes the geographical and occupational distribution of respondents, the report does not provide details of how interviewees were exactly selected or any possible bias, although KPMG is confident the process was ‘adequate’.

8 It is impossible not to note that the A-G could not establish its purpose either, beyond very generic statements of intent.
• The current approach to IEPS in tenders is having unintended impacts on pricing and subcontractors;
• There are opportunities to improve costs of compliance with the policies and to reduce red tape;
• Acceptance and understanding of the policy would have been enhanced by a more consistent and clearer communication strategy;
• Lack of transparency in the application and outcomes of RCP is of concern to many businesses;
• Planning and continuity of projects is key, particularly in remote areas; and,
• Government procurement policies need to be paired with Indigenous business capability development initiatives to really be effective.

These findings are compatible with the increasing universal political acceptability (and public expectation) of what is termed ‘responsible spending’ as it is understood around the world. As shown in previous chapters, the very recent notion that governments should attempt to address broader social and economic objectives through its public procurement, over and above the latter’s traditional role is still debated, and evidence of success remain scarce. It is unclear in the context of encouraging Aboriginal economic inclusion (through employment particularly in remote regions) what KPMG mean by ‘responsible spending’. The KPMG report provides a general interpretation adhering to those modern views embraced by both the Commonwealth and NT governments when it aspires to link [a] the large volume of public procurement activities channelled by government with [b] the demographic and social importance of Aborigines for the future of the NT, and their enduring social and economic exclusion. But an intention to do good is not what is responsible. While the ambition of economic inclusion is relatively universally supported, it is unclear that the terms ‘responsible spending’ apply properly, especially in the light of the AGNT report’s findings about significant waste and corruption.

Yet both the IEPS (focused on the construction sector) and the RCP were essentially conceived as opportunities to channel public funds towards areas and people seriously lacking opportunities; and in that sense follow implicitly the earlier vision of what Ah Kit described above. The economic framework context is described in the KPMG report, and an overview of the approach behind the community, local government and private sector consultations is included. The following stylized findings are extracted from those consultations about both policies:

  a) Confusion about the stated purpose, scope and targeted audiences

The report shows that there was considerable confusion in the minds of stakeholders themselves about the ‘Indigenous’ component of the policy and its ‘local’ or ‘remote’ aspects. The language of NT policy documents often appears to shift between ‘addressing Aboriginal disadvantage’ as a key aspiration towards ‘supporting local-remote economies’, as well as making references to ‘backing Indigenous entrepreneurs’ and ‘supporting Aboriginal employment’. This explains in part the typical NT interrogation of whether employing (or training) non-remote or non-Territorian Aborigines is acceptable when accessing dedicated government funding sources or making public relations claims about investing in the NT’s future. None of this would be particularly problematic if a credible program logic had existed in the first place.
An explicit mapping of the policy’s objectives based on a theory of the organizational attributes that would jointly optimize Aboriginal employment and ‘value for money’ demonstrable by measurable socio-economic impacts would have been necessary. The interviewees that responded to the KPMG research suggest a number of contending business attributes commonly believed to contribute towards those objectives: actual business ownership, location, partnerships and linkages with other businesses in the supply chain, access to innovative technologies, audited capabilities, key skills sets, past delivery records, training profiles, etc. At a minimum, a public procurement policy aiming to fulfil such multifaceted goals would require such a mapping to convince the public that it can effectively balance those goals and undertake corrections if it is found that it has relied on erroneous conjectures.

Even during their relatively short lives, the overall confusion in the purpose, scope and audience of the IEPS and PCR lead to several undesirable effects documented in the KPMG report (again as statements from the stakeholders rather than evidence):

- Suspicions (from all types of stakeholders) that the policy lacked transparency from its inception (essentially with respect to the awarding of contracts) and would likely be abused;
- Accusations that powerful industrial players undertook ‘black cladding’ through barely concealed joint ventures to take advantage of the policy, possibly an opportunistic façade, but also possibly attempts to create partnerships that could ultimately transfer skills;
- Uncertainty due to inconsistent advices provided by different bureaucrats surrounding the pricing of some elements (provisions sums, discount, bonuses) depending on their interpretations of the scope;
- Conflicts within the supply chain, mainly between large contractors holding core capabilities (to deliver large projects, goods or services) and smaller sub-contractors having the responsibility of addressing labour targets (identifying, convincing and reporting on local-Indigenous staff participation);
- Dissatisfaction by SMES that were cut off from the beneficial aspects of the policy (which targeted only specific Tiers based on project size) and were more likely to be local; and,
- Emerging suspicions that costings were being strategically inflated, resulting in poor procurement efficiency and performance (low cost-effectiveness) and claims that the policy framework was susceptible to being taken advantage of.

It is also notable that interviewees located in the remote regions systematically complained about the difficulties of sustainably connecting remote working force development with the objectives of building viable employment pathways – and repeated the common northern catchcry that ‘training for training’s sake does not work’, yet they saw a clear training gap in the policy\(^9\). They refer either to job readiness issues (literacy, numeracy, financial literacy, etc.), skill development needs or unachievable targets due to limitations in the availability, usability and

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\(^9\) In figure 2 of KPMG, p.11, references are made to skills development needs, poor job readiness (including English language skills), workforce availability challenges, bias in choices of businesses and limitations on SMEs, etc.
sustainability of the Indigenous workforce originating from relevant remote regions. These suggest that the ambitions of the procurement-driven policy might have been excessive. Enterprises embarking in the public procurement race found themselves either exaggerating the extent of the participation of remote workers they could employ (sometimes by playing with definitions or categories – as alluded in the AGNT report), over-pricing certain elements of the contract (to compensate for the lower productivity associated with some worker deployed only to satisfy requirements), or eventually attempting to pass the buck to subcontractors when not achieving their employment targets. There is a striking circularity and parallel with issues highlighted in reviews of remote training programs; when the latter are accused of supporting unrealistic skills development targets in regions where jobs don’t exist, and regularly getting caught fudging reported outputs of training delivery.

The KPMG report (p.12) refers to commonplace anecdotal suggestions that businesses developed ‘inventive’ tactics to circumvent reporting requirements and that contract management, monitoring and compliance by the Department of Infrastructure, Planning and Lands were inadequate. In all, the procurement policy and implementation became passive, with stakeholders asserting that ‘guidance on how to comply with the policies has been provided reactively in response to concerns or questions raised by industry’ rather than by linking policy adjustments to new knowledge about the outcomes desired, challenges encountered, the levers that existed to address them, or major implementation flaws in need of correction. The fact that advice was inconsistent across government agencies and procurement actors is telling of the overall confusion, and can also be in part attributed to the absence of a program logic driving a clear set of principles allowing to address new issues without losing sight of the overall purpose.

b) The nature of benefits from Aboriginal procurement

Despite having faced critical data limitations for even basic outputs (unexplained in the report, but highly consistent with the missing program logic and design vagueness), the KPMG report attempted to formulate a theoretical model of ‘benefits’ excluding dimensions such as government administration and business transaction costs which are more or less ignored in the report. Report authors developed case studies that distinguished between direct and indirect benefits, following a conceptual framework proposed by Gray, Hunter and Biddle (2014). The notion of an ‘employment gap’ refers in that specific context to the almost statistically self-evident determination that Australians (irrespective of origins or background) that are employed are also found to be healthier, more educated, less involved in criminality and contributing more to economic outcomes such as national income. Although the Gray & al. (2014)’s analysis is based on regression analysis, it recognises that ‘while it is relatively easy to establish the association between employment and a range of health and social outcomes’ (essentially a correlation), ‘identifying the causal impact is much harder’. In fact, no theoretical demonstration is proposed, and it is the intuitive appeal of a notional and historical link between employment and most other key

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10 That paper was formerly commissioned by the Department of the Prime Minister and Cabinet to help inform the work of the Indigenous Jobs and Training Review chaired by Andrew Forrest.

11 A more comprehensive approach examining the inter-generational connections between household education, health, employment, justice and other outcomes based on longitudinal data linkages comes closer to establishing causality (Hancock & al., 2013, Zubrick & al., 2006), but is also only suggestive in that context.
wellbeing determinants and outcomes in remote regions which justifies the attention given to ‘employment’ as co-
determinant of social and economic progress. But this remains speculative albeit empirically plausible, and the
credibility of the historical connection has restricted use for the sake of designing government interventions.

The KPMG report understandably selects to focus on direct benefits which they describe as ‘additional income’
(attributed either to individuals and families) and on increased expenditures/taxation (when considering the
communities or government as beneficiaries). It is arguable that their interpretation and its mapping are somewhat
problematic for the following reasons:

- The term ‘additional’ (as in additional income) is probably referring to the fact that net changes in income
  are of interest in attempting to determine the direct impact of net employment gains on individual
  wellbeing because many individuals earned income from other sources or received transfer payments (a
  consideration for the analysis of government as beneficiaries also discussed). This is expected, but it is
  unclear whether the analysis focuses on the additional income resulting unambiguously from the policy.
  To ascertain a net positive contribution, it must distinguish from, and account for, welfare payments
  (transfers themselves in many cases originating from outside the NT), other types of income that IEPS-type
  schemes might be displacing, including work opportunities that could have been available to Indigenous
  workers irrespective of the procurement policy itself. It is possible to confuse the impact of additional
  income from any government ‘project’ (construction, infrastructure, house, etc.) which offers new jobs
  which might or might not be made available to locals (due either to their own choices, lack of information
  or confidence, and/or the approach chosen by the contractor to find labour) irrespective of the
  procurement system endorsed; yet it is the impact of the procurement regime which is of interest as a
  source of ‘benefits’. The additional income might more appropriately be attributed to the project itself
  (which would have been delivered irrespective of the policy regarding procurement), rather than a
  positive impact resulting from its reliance on the procurement policy channel.

Whether a project producing paid jobs that locals inherited is a benefit of the procurement policy is a subtle
consideration since it is not so much about whether income was distributed (the welfare system also does that),
but about whether it impacts on the propensity to participate in the longer run. Exploring that dimension requires
that some inferences be made about the nature and likelihood of social learning, changing business attitudes
towards remote workers, and the possibility that the policy has itself increased the propensity to work of some
remote residents (including their motivation to invest in capabilities) who otherwise would not have chosen to do
so. From a policy administration viewpoint, it must be considered whether there are sufficient available and
qualified/skilled local Aboriginal workers (presumably just waiting to work in their region whenever opportunities
are provided and cheaper to attract than outsiders because they are already there), which hypothetically could be
employed by those businesses winning government contracts (whether procurement rules imposed on them to do
so or not), and whether suddenly employing them should be attributed to the policy? If on the other hand there
were in some regions many workers lacking the skills required for emerging large projects (not genuinely
employable), developing procurement policies for the sake of deploying them irrespective of their inadequate
capabilities would likely produce undesirable anomalies. Most likely this would result in businesses shifting workers
around symbolically (to satisfy procurement rules and contracts).
This is indeed what many of the comments made by some KPMG report stakeholders suggest when referring to productivity differentials between types of workers engaged. This indicates that an evaluation of outcomes should shift its attention towards establishing whether productivity and capabilities of that potential workforce has been positively impacted, rather than workers been officially hired or paid. These considerations suggest that the direct benefits from an Aboriginal procurement regime (as opposed to conventional procurement) should relate specifically to the impact of ‘work’ involving local Aborigines on their specific and sustained engagement with the economy, rather than that some measure of total income or wages (p.15). Otherwise the model purports that it is the fact of receiving wages (rather than welfare or other transfer payments) which constitutes the meaningful benefit to those individuals. This in fact would suggest that ‘being paid’ (for work done or not, for work valued or not) matters more than the actual contribution and connected investments in skills and capabilities.

- Welfare avoidance (reduction in the cost of all sorts of programs for governments) is of course very relevant ultimately as a financial matter and treated separately in the report. Yet its implicit aggregation with ‘additional income’ is questionable, in part because there is a spatial mismatch between the applicability of the procurement policies and that of the project funding base, and further with the welfare taxation funding base. We must speculate because of the insufficient details provided in the report and can only ascertain that a more comprehensive methodology was used but is hidden. It would perhaps have been more useful to consider three distinct categories of ‘direct benefits’ stemming from the public procurement engineering activity, which hold different implications for the targeted beneficiaries of the policy (and which could possibly be weighed differently according to contexts):
  
  i. Net income changes (and transfers in and out of the local economy);
  
  ii. Net effects on government transfers and debt (which entails considering any diminution in welfare payments of course, but also the costs of running the policy and programs, costs of litigation and compensations after disputes, and other public and private transaction costs linked with compliance); and,
  
  iii. Net effects of ‘employment’ per se, which must document changes in aspirations to participate (and impact on peers and relatives), training, and incentives to acquire new skills, including those needed for effective economic inclusion (various forms of literacy and numeracy).

- In the end, the notion of ‘additional income’ as the main benefit never seems to convey by itself the aspiration of such a policy which reaches into socio-economic transformation, although the research undertaken in the AGNT report suggests that motivations for the policy were never clearly articulated. A particularly problematic confusion arises when such policies appear to have been conceived as [a] arising from the opportunity to create conditions for Aborigines in regions to experience economic inclusion through employment (possibly enjoying autonomously the benefits of greater economic self-reliance) or [b] simply seeking the benefits that occur when additional income recirculates locally. The latter is not really discussed in any length in the KPMG report (but was discussed in our chapter 4), and it must be noted that northern remote regions notoriously are dominated by public sector activities and comprise very few market institutions that would create ‘significant’ recirculation or enhance peer-to-peer
productive economic linkages. To that extent, the recirculation argument is also weak in that remote context – which any efforts to model properly would confirm.

The main issue from an evaluation agenda remains the demonstration that the procurement framework is itself ultimately responsible for desired positive changes occurring, keeping in mind that the projects which were funded (services, goods or major infrastructure) were needed and would have been contracted irrespectively of the procurement approach favouring some groups or types of businesses to achieve those objectives. A more adequate evaluation approach needs to consider both [a] how to measure only the net local spending (above what any contractor would have spent in the region anyhow) and [b] whether there exist cheaper, more effective ways of compelling local entrepreneurship, local employment and local recirculation than meddling with procurement.

Other methodological and philosophical issues associated with extending the mandate of public procurement to address socio-economic disadvantages

- Previous chapters have examined issues linked with the interaction between public procurement and established inter-jurisdictional agreements related to trade and protectionism. Although these could appear peripheral in recent instances of Aboriginal procurement in the NT, they could be of a greater concern if public procurement extended its mandate across States and was used systematically as a means to disadvantage businesses originating from other jurisdictions. As for the examples uncovered in chapters 4 and 5, some would question the legitimacy and intent of those policies (especially if they cannot demonstrate results in their secondary objectives). This could also affect inter-State (and -Territory) trade if businesses missing out were based in other jurisdictions (that initially did not reciprocate) and these put pressure on their own states to endorse similar procurement exceptions that could eventually disadvantage the NT.

- A critical issue arising when governments and bureaucracies attempt to drive intricate social and economic transformations is whether they themselves embed the knowledge and capabilities required to undertake the complex tasks at hand. This applies to the full range of activities, from the design, implementation, monitoring and evaluation, analysis and amendments required. The following reasons allow us to doubt that the public sector is ready and capable of running such procurement systems competently:
  - The evaluation of policy and programs across the entire public sector remains an under-developed field, possibly by omission or more likely by disposition. Bureaucracies persistently recognise the critical importance of evaluation processes, conduct poor attempts (without data, or objective evidence), admit their inadequacies (even when assessing programs and domains they have traditionally been responsible for) and yet appear to not be able to afford the resources or gather the political will to support evaluation activities likely to uncover areas of incompetence, highlight mistakes of judgment or make the government of the day appear to have failed.
  - All chapters before underlined the inability of jurisdictions undertaking procurement programs to produce value evaluations. The vast majority of evidence used in this review occurred through large-scale statistical analysis of specific outputs (not outcomes) in a few instances, stakeholders surveys, and post-policy case studies.
In the current cases studied in this chapter, the Canadian example showed intent to undertake evaluations and reviews, but inability to use credible evidence. In the NT cases, no reference was made to any evaluation plan and data collection design, which would have distinguished properly between outputs and outcomes. The KPMG evaluation appeared to have had to improvise the best they could to allow their client to achieve a milestone.

The fact that entire, well-resourced and large-scale research-based interventions have attempted to address the systematic disadvantages of many social groups, with limited success, should bring about some humility regarding what the public sector can and cannot do, even when with the best intentions. The recent NT Intervention and subsequent Closing the Gap policies focusing on Aboriginal disadvantaged in remote/northern regions have received unparalleled funding and produced negligible results – as somewhat conceded by all Closing the Gap reports in the last decade, despite the tendency for such exercises to qualify such policies ‘success’.

- The possibility of scope/budget creep and the risk of dependency should be a major concern:
  - Examining mainly the Commonwealth’s Indigenous Procurement Policies (IPP), Jacobs (2017) suggests that several unintended consequences could arise from target-driven policies of that type. He not only claims that the target measurement system exaggerates its own success and actual reach by featuring contract numbers rather than spend (both basic outputs), but also that it is increasingly investing in resources to counter ‘black cladding’ (mentioned as having occurred in the NT in both the AGNT and KPMG reports, and recently exposed by Warren Mundine, 2017). It stems from Jacobs’ analysis that current reporting of contracts, employment and values is insufficient, and that the system might be advantaging excessively certain companies taking on more contracts not because of superior or increasing business or production capabilities (in their sector), but through their ability to strategically reorganise to suit procurement policies. This in turn could lead IPP to ‘create a situation of dependency, where suppliers are overly reliant on government contracts and find it difficult to survive in the open market’ (Jacobs 2017, p.2).
  - The notion of ongoing dependency applies also to remote communities themselves. In the long-run, there is a conceivable philosophical contradiction between the objectives of enhancing Aboriginal economic self-sufficiency and sovereignty, yet seeing communities and individuals increasingly relying on government processes to engineer it, especially in regions where market institutions are quasi-absent and the public sector is pretty much ‘the economy’. This is apparent in the discussion in the KPMG report (p.28) on the need for longer-term commitments and project pipelines.

The nature of the construction industry is transient, project-based work. This can often conflict with the cultural and social norms of Indigenous communities, which discourage geographic movement and dissociation from one’s family or community group. Therefore, in order for the RCP to meet its goals of local Indigenous and community development, it will need to ensure a continuous pipeline of work capable of sustaining a local workforce engaged in productive activities. The length and nature of projects made it difficult for businesses to incentivise people to move off income support
and into employment. Often business is told that it is too difficult a process to get back on income support if there is no more work after the project finishes in a couple of months. [...] For instance, some organisations favoured apprenticeships, but without a longer pipeline of projects and the additional support required by some Indigenous workers to pursue apprenticeships (e.g. having to travel to bigger regional areas to access training) the model did not support hiring Indigenous people into these jobs.

The above shows that solutions proposed are likely to call for even greater involvement and economic engineering by the government, reaching most likely into training and work readiness, rather than favour local solutions or stimulate personal decisions to be socially engaged with the mainstream economy. The deficiency of decentralized market institutions characterising remote regions means that room for testing good and bad ideas (independently from political processes and bureaucratic controls) is limited, and the determination and exercise of individual and community freedom of choice cannot occur.

- It is worth considering that pursuing ever ambitious Aboriginal procurement targets in a jurisdiction such as the NT could lead to public funding creep. This would occur if disagreements over the demonstration of targets reached regarding ‘employing Aborigines’ or accusations of ‘black cladding’ became excessively burdensome. The compliance and adjustment costs of resolving such issues could easily overtake the net value or benefits attributed to the delivery of the essential services that constitute the core of a government’s mandate and overall social contract (education, health, safety, housing, etc.). In the case of jointly funded Commonwealth-Territory projects, this would be even more complicated because involving interacting government levels and funding buckets.

- Another aspect that is far from trivial and disregarded in most sources consulted, except perhaps for the AGNT, is the determination of the total net cost associated with running the components of the procurement system aimed at supporting Aboriginal economic inclusion. Right after an era of attempting to cut down red tape, the costly requisite of running and maintaining the system, as well as the indirect costs falling on businesses themselves, must be considered and would likely turn out to be substantial (see chapters 2 and 3). These would include:
  - Identification costs – irrespective of the definitions of an ‘Aboriginal business’, determining who is eligible and under what conditions could turn out to necessitate a costly administration in itself, if only to avoid issues such as those raised by Mundine (2017) and mentioned during recent NTG workshops scoping an upcoming Aboriginal procurement framework redesign.
  - Various transaction costs linked with risk management (the recent legal fallout from the IEP is a telling example, even if the full costs of poor bureaucratic decisions and business opportunism will never be revealed), upgraded monitoring and comprehensive reporting (essential for producing outcomes and impacts), improved communications (emphasized in the KPMG report), contractual compliance (costly particularly when dealing with murky matters such as who is local and who is an eligible Aboriginal person), and managing ensuing political risk.
3. Conclusion

As the NT is embarking on a rethink of its Aboriginal Contracting Framework and undertakes public consultations to determine the scope of such an endeavour, it is likely that insufficient information about what went wrong has come to the surface or been subjected to the scrutiny it requires, in large part due to risk- and blame- aversion of bureaucracies and governments, and their ineptitude to face up to critical analysis that might show that policy experiments have failed. In this chapter, we’ve attempted to identify significant issues, based on a few public sources reporting fragments of what had happened in Canada and in the NT, and speculated on what the implications are for the future.

Given the critical and perhaps provocative tone taken in this chapter, it is appropriate to finish by reiterating that policies extending public procurement, including the ambitious NT Aboriginal procurement initiatives, aim to be disruptive and change fundamental aspects of the social and economic environment in which they take place. If successful, this must by necessity create radical disruptions possibly reaching at the core of governments’ and bureaucracies’ values, main business scope and responsibilities, for which they cannot be fully prepared. It is a contradiction that they adopt the language of ‘transformation’ and yet do not appear willing or capable to face up to experimental failures, acknowledge the need to change direction when net negative impacts arise, and to pursue genuine evaluation efforts based on honest efforts to develop theories of change or program logic, and design and pursue evidence-gathering strategies matching those visions.
Chapter 8: Conclusion of the review - Overview of key issues and proposed decisions sequence

Chapters 2 to 7 summarized the most valuable literature we managed to uncover to address the topic formulated earlier regarding the applicability and desirability of public procurement to achieve regional development goals, and that we selected following the rules and methodological principles we set and described in chapter 1. Prior to extracting findings to inform future decisions about regional public procurement, we make a number of generic observations about the current state of public procurement knowledge from a policy perspective.

1. The state of knowledge about public procurement

There are many, fragmented ‘public procurement’ research worlds, and our review showed that these worlds have not yet been integrated, making it difficult to address systematic contradictions that appear to arise when overviewing them. This means perhaps that activists are free to advocate within their own logic and boundaries, and policymakers are free to trial, although at a great cost for those underwriting many inadequate schemes (usually consumers, taxpayers and businesses disadvantaged by arbitrary favouring), as recent Aboriginal procurement experiments have shown. To that extent the literature we accessed provides limited guidance to solve practical problems, although our review identifies key issues that require attention and have been acknowledged as critical across procurement systems, places, and jurisdiction levels.

The sources uncovered and consulted on public procurement across research, policy, advocacy domains belong broadly to two domains that do not appear to connect with or inform one another:

a) The academic literature which has been emphasized in this review, which attempts to focus on whether public procurement as a policy mechanism (in given places and time) is informed by coherent objectives or rationale, and sometimes to explore whether evidence has been produced (directly or indirectly) that can inform effectiveness and outcomes in line with original policy intentions. Research work and empirical sources themselves arise from a large variety of disciplines; they do not appear to be ‘owned’ by any discipline and have never really been purposely integrated as far as we can tell; and,

b) A grey literature largely accessible on the web originating from wide-ranging sources which combine government sources describing their priorities, beliefs and intentions (we have mapped across Australian jurisdictions in a complementary output for RAI) as well as advocacy bodies (NGOs, some regions or local governments, various interest groups, etc.). These usually feature enthusiastic declarations about the ‘procurement opportunity’, and endorse some elusive support for wide-ranging political agendas. Government documents therefore emphasize policy aspirations and sometimes their developing implementation plans, and are less concerned with feasibility and accountability. The advocacy contributions can include sketchy case studies, tools and templates with various degrees of believability that appear designed to encourage smaller jurisdictions to embark on the public procurement bandwagon.
Despite recent eagerness by various advocacy platforms communicated through the grey literature to make public procurement a new foundation for economic or social action (across jurisdiction scales or government levels) and redesign it as a ‘policy opportunity’, it remains controversial in the academic literature which more readily takes into account the impact of existing policy foundations, trust in government institutions, accountability and threats to open trade. To be fair, leading thinkers on the topic disagree considerably on its worth and flexibility as a policy instrument with McCrudden (2006) describing public procurement as ‘an extraordinarily adaptable tool’ while Schapper, Malta, & Gilbert (2006, p. 2) claimed that ‘[p]ublic Procurement is one of the least understood and most vulnerable areas of public administration’ and that procurement ‘as well as its reform, still faces lack of consensus about its scope, nature and strategic value’. In our judgment informed by the academic contributions we encountered, these statements together remain a fair assessment of what that disjointed literature says about the field to this day, in large part due to limited progress in the field’s ability to evaluate and to produce convincing evidence of progress.

It is important to reaffirm that while the vast majority of the worthy procurement knowledge and evidence we found applied to national or state scales (irrespective of domains covered in our various chapters), only a few instances could be found that intentionally addressed the regional or local procurement contexts, and yet the principles extracted we believe apply correspondingly across levels. This view is informed by some research which has considered whether the nature of specific key issues (trade and protectionism for instance) applied equally to ‘In-State’ trade and strategic considerations. The main differences across jurisdiction levels (from the national to the state to the regional and local) have to do with the range of capabilities found at each level, which can be conjectured in general to decrease as we consider the more local governments and their bureaucracies. This applies to the competencies available to design policy instruments, to extend policy scope across sectors, to undertake objective evaluations and produce credible evidence frameworks as well as to the existence of legal institutions and compliance mechanisms less likely to be accessible to ‘lower’ jurisdiction levels.

2. **Defining the public procurement ‘problem’ remains problematic**

Procurement as a public management function has existed for a long time, and never been fully unprejudiced in its effects (being a government administrative process), never been fully transparent to the public (for sound reasons as it sits at the interface between the public and private sector domains), and has always been somehow been juxtaposed to other policy instruments capable of fulfilling somewhat complementing or playing similar roles, although perhaps with different costs, scrutiny and risks to governments.

Much of the research on public procurement reviewed makes judgments about whether it constitutes an ‘effective’ way of solving social, political and economic development problems. While this might appear as a fair and straightforward enunciation of the focus of research, the ‘problem’ with public procurement is really in agreeing on the dimensions of effectiveness. Does it refer to the acquisition of goods X, Y, Z at a decent price? Does it refer to the ability to maintain the public’s trust and understanding of the procurement system? Does it refer to employing locals in the process against free trade principles? Does it refer to using certain types of enterprises or certain types of workers? Does it mean managing or fulfilling a target number of contracts per months? Does it
mean streamlining and reducing the costs of procurement to the public and limiting conflicts with other policy interventions?

In government media communications, in public agency planning documents, and in annual reports, the term ‘effective’ (applied to policies or interventions) can be quite hollow, unless it is precisely framed, can be contrasted to some alternative and backed by evidence. The same applies to research insofar as we found that interpretations of ‘effectiveness’ vary considerably across procurement domains, across disciplinary perspectives and across policy agendas. It is indispensable to further the agenda of public procurement research to circumvent definitional inconsistencies and initially highlight the diverse perspectives on effectiveness for the sake of advancing a dialogue based on a more cohesive analytical framework. This might in the future provide practitioners and policymakers with endorsed principles that could provide a better basis to address the varying scope of government procurement dilemmas.

A simple representation and definition of the problem encountered in our review provides a useful initial depiction of the dimensions of ‘effectiveness’ required when assessing the desirability of widening any government procurement agenda to incorporate several policy goals. It is useful to firstly conceive of public procurement as a policy instrument by considering its minimal possible scope: That is undertaking purchases efficiently to fulfil its mandate. Any government must, on behalf of the public, acquire some goods and services (or even purchase entire major projects and commission their design) which eventually will be supplied by the private sector. We assume that those acquisitions are legitimate and necessary to realise the policy directions supported by the electorate through a variety of political processes and institutions. These are not questioned here and the purpose for the primary purchase (or function in the diagram below) is therefore assumed to have been transparently communicated and endorsed. The procurement process starts with the administration of that acquisition; and processes justifying it prior are taken for granted. The consideration of more subtle questions related to effectiveness requires the establishment of a hierarchy of functions, whereby we distinguish between primary and secondary objectives of public procurement, as suggested by Furneaux & Barraket (2014).

<table>
<thead>
<tr>
<th>Alternative goals</th>
<th>Description</th>
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<tbody>
<tr>
<td>Primary function:</td>
<td>• Delivery of a government commitment that involves choosing, purchasing and sometimes assembling input ingredients (office stationery, a road, housing construction services, school materials, police or health services, a submarine, etc.)</td>
</tr>
<tr>
<td>Related to the acquisition (of goods and services) or delivery (of an infrastructure project)</td>
<td>• Based on notional ‘public interest’ principles that would dictate that it should maximize the output (with multiple attributes such</td>
</tr>
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We are deliberately evading a basic economic trade-off between [a] producing within agencies or bureaucracy and [b] procuring from the private sector. The well-established research agenda related to natural monopolies, government enterprises vs privatisation, public-private partnerships and more generally ‘industry regulation’ offers an even broader range of policy alternatives not featuring in the scope of this review.
Subtle questions arise about choices that need to be made within the primary and secondary functions, as well as the tensions and resulting trade-offs between them further discussed below. What is clear from our review is that the research literature often fudges the issues (sometimes apparently on purpose), with limited subsequent efforts to disentangle them, let alone to propose simple methods to tackle them at a practical level. Future research needs to formulate frameworks addressing these different but interconnected questions about in a coherent manner. Yet, we can identify in this conclusion chapter several generic tensions that need to be considered, and choices that need to be made when trying to determine whether public procurement constitutes a suitable instrument to address social and economic problems.

When looking at a policy menu, the notion of ‘public interest’ can easily be manipulated to justify a course of actions such as improving equity (i.e. redressing the wrongs of low historical SME participation in procurement markets) or providing services effectively (i.e. delivering swiftly adequate housing infrastructure in a given community) or maintaining accountable procurement processes (i.e. ensuring services integrity and business satisfaction, minimising complaints and legal damages), or again supporting lagging regions (i.e. by favouring local producers). These are the competing goals that must be reconsidered in their entirety in any proposal to modify the scope and rules of procurement, but most of the advocacy platforms considered tend to reduce their analysis to one aspect without considering impacts or distortions arising in other dimensions (McCrudden 2006 is a notable exception). As simple as the distinction between primary and secondary functions might appear in hindsight, what has become clear from the review is that it has been disregarded in numerous arguments. Many of the basic difficulties encountered when embarking in (and designing) public procurement instruments broadening the role of public procurement arise from the inherent tension between short-term goals and long-term ones, the latter usually being aspirational (often overstated when a policy direction is advanced to the public) but rarely pursued to its full logic nor evaluated, for obvious political and administrative reasons. Throughout the review, a number of short-run and long-run trade-offs were identified, which in fact provide a useful way of characterizing many of the tensions found in public procurement:
• Favouring local suppliers is the most widespread, almost universal, secondary objective pursued by jurisdictions of all levels and sizes. In the short run, it always appears desirable for a region to prioritise procurement from ‘local’ suppliers (assuming that local capabilities exist for locals to deliver the goods and services) because attention is entirely directed towards short-term gains, political and economic. In the longer run, the possibility that neighbouring regions will retaliate, or simply mirror such behaviour and decrease total trade and economic growth for all remains a most likely outcome. Furthermore, it has been argued in chapter 3 that the neediest regions or jurisdictions (either dealing with economic decline or structurally remote) are the most vulnerable to losing out from any trade degeneration.

• Governments favouring local industry through the procurement process (whether they do so explicitly or not) often call upon simplistic arguments such as those articulated around income recirculation and multiplier effects – which might or might not be sound. These can be quite misleading if they do not entail reliable counterfactual scenarios based on credible evidence and attempts to measure the benefits arising to both government and community (there are always winners and losers). The truth is that governments often wish to allocate contracts to locals because of reasons that have little to do with ‘public interest’ overall, as they cannot define the latter. The combination of ‘populism’ (the impact of local favouring on their chances of being re-elected), ‘parochialism’ (the unquestioning trust communities have in the superiority of their local knowledge of their own needs, and if the loyalty of political representatives and local businesses towards their community), and ‘protectionism’ (the belief that if you can get away with favouring locals without being too visible or detected by neighbouring localities and advantage your locality) all contribute towards this excessive focus on short-term gains. They surely appear to prevent communities from methodically assessing their long-term competitive advantage and the determination of the best arrangement of institutions and policies to support sustainable aspirations.

The key point made here is that defining public interest is messy, cannot be based solely on short-run consequences of interventions, and that governments will likely favour simplistic narratives to manipulate that agenda. Our review has uncovered much evidence (see chapters 3 and 4) that even when governments allegedly reciprocally agree on cooperative trade measures, their rationale, and the means to pursue them (incorporating public procurement components), the majority will systematically cheat against the agreements they support, if they can get away with it. This is significant because it shows that any assessments of the pros and cons of using public procurement to address various policy agendas (possibly combining primary and secondary functions in the way illustrated above) must consider realistic traits and behaviours of industry, government officials and public authorities. This applies therefore to the propensity to be faced with corrupt behaviour, and to the need to make allowances for the tendency of governments and bureaucrats to promise adequate evaluations and credible evidence which will almost always remain unfulfilled, some researchers suggesting possibly deliberately. The need to factor in, and manage, those behaviours imposes considerable public costs which must be taken into account when deciding on the scope and design of public procurement instruments, and their net impact on public interest.

The notions of ‘performance’ (of a policy instrument), ‘success’ (of an intervention or policy) and ‘effectiveness’ of an approach appear side-by-side in the literature (often confused in the references examined) and it seems useful to consider them in the light of the dual framework discussed above. To the extent that degrees of involvement in procurement differ between jurisdictions, the question arises as to whether there are better ways of doing things and why some approaches are adopted by some jurisdictions and not by others. Demonstrating that using public procurement is an effective way of dealing with a complex problem appears to require:

a) the ability of the mechanism to ‘solve successfully’ the problem be demonstrated (usually through sound evaluation procedures backed by credible evidence); and,

b) that the net benefits (including full system costs) to the public of this policy approach be contrasted with the next best alternative approach (for instance not involving procurement but a direct intervention, possibly also publicly funded), including the possibility of not intervening.

Combining those considerations is a complex matter, and academic research has not provided a framework to model these fully yet. It would require making conjectures about the extent to which problems can be solved (these are not binary results) and whether learning can really occur and provide the solutions needed (given our prognostic about the ability and willingness of government agencies to conduct trustworthy evaluations, this is quite problematic – see also Lesh 2018), about the nature and extent of trade-offs between types of benefits and expenditures associated with service delivery in the primary function itself, and about the bureaucratic, legal, political and other transaction costs associated with the full implementation of complex public procurement policies. While we are far from being able to integrate the numerous dimensions to be considered, we can propose a crude categorisation of the relevant dimensions (or ‘measures’) that might help us visualise the information needed, and the scope of elements required to assess those policies. In the following section, we will suggest a preliminary sequence of ‘decisions’ that need to be considered.

<table>
<thead>
<tr>
<th>Typical outputs</th>
<th>Typical outcomes</th>
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<tr>
<td><strong>Primary function:</strong></td>
<td><strong>Good or service delivery focused</strong></td>
</tr>
<tr>
<td>- Output delivery (to target)</td>
<td>- Supplier satisfaction with process outcomes (industry winners and losers);</td>
</tr>
<tr>
<td>- Cost per unit of output</td>
<td>- Indicators of accountability; such as complaints about process, public perceptions of corruption or unfairness;</td>
</tr>
<tr>
<td>- Quality of output</td>
<td>- Compliance effectiveness and legal costs to the public;</td>
</tr>
<tr>
<td>- Some weighted scope</td>
<td>- Transactions costs to government and private sector; and,</td>
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<td>(such as the MEAT discussed in chapter 5)</td>
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We use loosely the familiar distinction between outputs and outcomes (typical of conventional evaluation studies) to parallel the tension between short-run effects (what actions or what has been done or produced by the intervention) and the long-run impacts (demonstrable meaningful changes attributable to those actions). It is extended to account for procurement situations where two (or possibly more) distinct functions are combined, which is the main problem that the recent research literature has been struggling with. This categorisation is useful because the presentation of public procurement as a loose array of disparate benefits, that would not distinguish between functions and between outputs and outcomes has been responsible for our inadequate understanding of how primary and secondary goals affect each other, and how short-term and long-term outcomes and costs are likely to interact.

The table above is best appreciated by using it to map an example. When considering an effective public procurement approach to [a] produce and deliver stationery goods utilised in schools (the primary function) while [b] attempting to advantage women workers or SMEs (a common secondary function in the US), consideration would have to be given firstly to whether public is getting value for money with respect to the production and delivery of stationary (primary function), and then if this is leading to a greater participation of women SMEs. Chapter 5 and 6 clearly showed that tensions would arise between those effectiveness dimensions if, for instance, the policy ended up procuring from SMEs that were inferior (in a cost-value sense) but had been favoured to achieve the secondary objective (if this was not the case, favouring would be unnecessary). To assess effectiveness, outputs and outcomes applicable to both the primary and the secondary functions must be taken into account. In terms strictly of the primary function, the procurement approach adopted must not only deliver value for money (the output) but also retain the integrity of the procurement system (the outcome), which entails not generating excessive system costs (red tape, compliance, legal, etc.) that would ultimately be borne by the public. In terms of its secondary function, the procurement policy chosen might temporarily and artificially increase the number of bids by women-led SMEs, but in fact have negligible (or sometimes negative) impact on their future ability to compete in procurement markets, might negatively impact competitive enterprises pushed aside, and possibly lead to a public backlash and loss of public confidence towards the government, especially if the lack of transparency is criticized, private capture is suspected, and process integrity is questioned.
While this level of thinking about public procurement issues exposes some of the inherent complexities, it really is a simplification of the intricate interactions at play within such systems. Of course, conventional public procurement does not entail explicit secondary objectives, but the tensions between delivering ‘value for money’ and maintaining an economical and sustainable procurement system remain (see chapter 2). To the extent that the literature showed that discrimination towards local suppliers has historically been quasi-universal (for reasons detailed in chapters 3 and 4), key trade-offs arise between the public interest associated with the value of the goods or services procured and that related to alleged local benefits from producing locally and spending inside the region. The balancing act required to appraise those claims requires that primary and secondary goals be differentiated.

Given the increasing number of startling claims made about the benefits of using public procurement to pursue even more diverse social and economic policy questions or agendas, as well as the ease of that institutional toolbox, even more care is required to assess their plausibility. In particular the dependability and suitability of measures of success need to be commensurate to claims about potential for high levels of effectiveness and great value for money. Our findings from the literature suggest that such claims, for lack of appropriate categories and frameworks, usually side-step many of the most important cost or benefit questions of great importance, and rarely provide any evidence of effectiveness or outcomes. In fact, the often so-called ‘opportunity’ to add secondary objectives must be considered carefully, and always in the light of the next best policy or institutional alternative, remembering that many policy instruments exist which could be used to achieve those same goals without meddling with procurement processes. Such considerations apply even to local preferencing where the risks of corruption, trade retaliation, increased red tape, compliance and legal costs (as opaque procurement decisions are regularly challenged in courts by businesses) mean that those aspects must be weighed and set side-by-side against the anticipated benefits.

Any government considering adding a secondary function (or more) to the public procurement process will eventually be asked to demonstrate that this was a good idea, and will need to be able to provide evidence with respect to:

- Its ability to effectively address the secondary aspiration beyond simple outputs.
- The extent to which the inclusion of the secondary function or goal did (or not) compromise or affect negatively the delivery of the primary objective.
- The relative cost-effectiveness of using public procurement (relative to other policy mechanisms) to address those secondary objectives.

The latter point is most demanding yet critical decision to make, and our review showed that recently some jurisdictions and government authorities appear to rush optimistically towards public procurement as a policy instrument without an appreciation of the implications of those questions and without contrasting it with alternatives. While our review did not uncover any simple best practice or templates that regions can adopt, we suggest below a sequence of binary-choice questions to be considered when embarking on any multi-function procurement pathway, that should apply to the majority of cases and contexts. We propose that regions need to
develop the ability to consider those issues systematically before embarking in complex procurement designs and prior to setting up suitable evaluation frameworks.

4. **Lessons from the literature on public procurement: Mapping key choices**

Our literature review revealed an overwhelming gap between some of the most outlandish claims made about the possibilities that public procurement offers to solve social and economic problems, and many cautious warnings about the need for a greater understanding of the implications of interfering with smoothly working procurement institutions and existing trade agreements. The biggest gap was between all those claims and the absence of:

   a) any coherently constructed and well-developed logic capable of informing policy choices about public procurement scope, design and implementation;

   b) any historical or recent objective and credible evidence that those choices were effective in some way compatible with their own stated goals; and,

   c) any method that would provide reliable cost-effectiveness appraisals of specific procurement models.

In fact, the ability (and perhaps genuine willingness) to even evaluate public procurement policies appears so restricted that proper evaluations could not be found in the public domain and our entire review had to be based on attempts by academic researchers who had undertaken post-policy empirical studies using independently collected datasets and conducted their own stakeholder surveys. Our review has revealed that questions such as ‘which is the best method to support the local economy’ or ‘assist small enterprises’ or ‘aid disadvantaged minorities’ through interventions in the procurement process cannot be readily answered for lack of both evidence and frameworks as there are no integrated and coherent body of knowledge allowing to answer such fundamental interrogations.

In fact, it is perhaps the case that such questions cannot be answered from an abstract calculation or model. Our review showed that many context-specific elements contribute to an array of fundamental choices and intervening factors that need to be made explicitly when choosing a procurement direction. Those contextual choices can be interpreted as a map of the basic ingredients that need to be considered when selecting a public procurement approach (in terms of its scope, design, transparency, rigidity, administration, etc.) that is useful to most governments, yet will be answered differently across different jurisdictional levels, community aspirations and government mandates, taking into account dissimilar resources and capabilities. There is in that sense no state-of-the-art approach to public procurement, although there are fundamental dimensions and policy choices that appear unescapable when analysing strategic procurement policy-making. These choices reflect specific public procurement trade-offs revealed in the various sections of the report:

1. Considering the trade-off between ‘efficient delivery’ and procurement-system accountability

2. Considering the tension between long-run benefits from open/free trade competition and the short-run compulsion to advantage locals
<table>
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<th>The choice between discriminating to back ‘buy-local’ or adopting a neutral procurement approach</th>
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<td></td>
<td>The choice between remedial preferencing and tackling access barriers to procurement markets directly</td>
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<td></td>
<td>The choice of preferencing method</td>
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<td></td>
<td>The option to link public procurement delivery to extraneous social objectives</td>
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<tr>
<td></td>
<td>The resolve (or not) to invest in capabilities required to effectively and transparently administer the procurement process, to undertake monitoring and to implement credible evaluations</td>
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The above reflect fundamental tensions between priorities and beliefs about what the procurement process offers and what its legitimate uses should be, and whether distinct procurement agencies are both capable and willing to identify needs, risks, and issues to learn from their mistakes. We offer this sequence of choices (reflecting tensions or trade-offs applicable to most policy settings) as a tentative pathway to building more effective and adaptive public procurement processes reflecting the best choices for distinct circumstances. This is done because we believe that any distinct ideal mix will ultimately emerge as a context-specific compromise between functions. It is more likely to be validated and understood if it can be shown to result from social, political and economic aspirations featuring various net benefits and costs, but structured in a way that can be validated, if investments in trustworthy evidence have been incorporated in the policy framework. We summarize those choices sequentially:

1. **Considering the trade-off between efficient delivery and procurement-system accountability**

   At the heart of conventional public procurement features the design of procedures to ensure that procurement decisions are fair, reflect the public interest, and do not lead to excessive amounts of red tape and administration costs (extending into compliance work and monitoring), uphold community expectations with respect to transparency, minimise corruption (a very real and recurring source of disruption) or objectionable behaviour (both within the bureaucracy and private sectors), and do not lead to distortions affecting other trade and commerce including transaction costs (in and outside government procurement). Major international organisations discuss those aspects at length (see chapter 2) and note that high-level tensions arise (even in the context of only basic single-function procurement) which cannot be ‘digested from a procurement training manual’. That chapter of the review shows ongoing tensions between the instrumental purpose of procurement (getting the job [such as building the bridge, delivering offices, acquiring equipment, etc.] done) and the government’s policy mandate regarding fair and efficient coordination, transparency and accountability mechanisms within the procurement system.

   Among the considerations that smaller regions in particular need to consider carefully, the role played by ‘institutions capable of conveying credible threats’ to ensure compliance, and avoid fraud and mismanagement are critical. Procurement systems work somewhat better if participants (including businesses) build and value
significant amounts of trust capital, and gain from not breaking rules that would affect their reputations. If small regions are powerless and cannot coerce suppliers that do not abide by their contracts, they can face significant costs due to their limited power to control and exercise authority to redress situations where suppliers (who won procurement contracts) do not deliver the promised products or project as negotiated. The literature shows that cheating on derivative conditions, failing to abide by social and environmental stipulations is common and creates bureaucratic and legal costs (of redress) that local authorities might not be able to face up to. If and when legal backup mechanisms are weak, then the potential red tape associated with monitoring contractor behaviour is considerable.

Another key aspect discussed at length in chapter 2 is the transparency of the decision process (with respect to the formulation of criteria, their communication to the public, the invitation and selection of bids, the decision mechanism, etc.). A key principle emphasized in the literature is that those mechanisms should be sufficiently explicit and clear, and would result in the same final decisions (say choice of procurement bid winner) irrespective of whom from the bureaucracy is involved, and that no individual or role should have excessive discretion on the final outcomes, and be tempted to be swayed by connections with bidders. It is arguable that such dimensions are particularly murky at the local and regional levels, where individual interference and connections are likely, where opportunities for corruption arise because of small numbers, lesser institutional scrutiny (real or perceived) and weaker auditing processes. The review has revealed that dealing with the aftermath of poorly conceived procurement implementation often constitutes the largest source of administration costs, and that risks of fraudulent behaviour increases with the number of objectives and their complexity.

2. Considering the tension between long-run benefits from open/free trade competition and the short-run compulsion to advantage locals

Since the review showed that governments at all scales face an unrelenting temptation to discriminate in favour of locals at the expense of external competitors, the implications of such choices, formal or informal, need to be carefully considered. There are many potential costs to systematically advantaging local producers or suppliers that should not be ignored. If retaliation by neighbouring regions or trade partners is feasible, the potential total loss must be carefully considered – as in the popular depiction of a trade-off between ‘the size of the pie’ (maximized when stable and open competition lead to potential static and dynamic gains from trade) and attempting to transitorily increase one’s ‘share of the pie’, but at the cost of undermining the necessary openness that led to an overall greater size. The long-term consequences of decisions to advantage locals can easily be overlooked by smaller jurisdictions taking for granted that their impact on overall economic prosperity is either too small to be noticed or unlikely to lead to retaliation. Chapter 3 has shown that regional governments should also be concerned with those principles, and that overly focusing on popular short-term employment gains without appraising the snowballing impact of reduced trade can lead to decline in prosperity, away from the ‘public interest’.

Other costs arising from favouring locals are discussed in the item just below (#3), but the benefits of maintaining competition when external firms operate and compete with locals in a locality or regions for government contracts must be emphasized. If procurement discriminates against outsiders, a locality or region would stand to lose imported innovation, positive competitive pressures forcing locals to increase their own productivity beneficial to local consumers and local firms in further industries, etc. Whenever arguments can be found to bypass open and
fair-trade harmonization to achieve specific policy objectives, these could probably be addressed through direct interventions, rather than through public procurement interference. Several references discussed in chapter 3 claimed that common reasons governments interfere with public procurement are to achieve macroeconomic redress (during slumps), address regional development or facilitate industrial restructuring agendas. Governments perceive procurement as a policy channel offering flexibility and sufficient opaqueness to avoid scrutiny and having to justify actions condemned by trade agreements or that could critically trigger trade retaliation. This is how governments can support the general principles of fair and open competition while creating blatant barriers to trade (using the procurement market) so often contravening the principles they claim to embrace.

In such policy contexts, several authors mention the ‘international disciplines’ benefits arising from adherence to open trade not only for the greater worth extracted (the primary function output) but also its ability to deter bribery and corruption. That logic applies equally to the regional level. Furthermore, the inclusion of bids from external businesses provide a valuable benchmark to ascertain whether local bids are legitimately on par with industry and consumer expectations. Any enlargement of the pool of bidders puts downward pressures on prices that serves the public interest, and also provides an indicator about bids that are too low to be credible. In all cases, it means that delivery undertakings can be dealt with if a supplier is in difficulty as a large pool of alternatives can be found. Similarly, choice and comparability keep a check on corruption, and play a critical role in maintaining necessary transparency.

**CASE STUDIES: Indirect costs resulting from trade breakdown**

Trade researchers have long established that unreasonably high proportions of government contracts go to local suppliers. When interviewed confidentially in research surveys conducted by Rickard & Kono (2014) in Europe, national procurement authorities and specialists confirmed that contracts are systematically awarded to domestic firms. The proportions were particularly high for local governments. Ninety-nine percent of all local authority contracts in European Union countries are, in fact, awarded to domestic firms (according to Martin, Hartley, & Cox, 1999) despite established principles that no anti-competitive interference should occur.

The connection between unethical or corrupt behaviour and local support has been demonstrated, through large data sets documenting US State governments decisions to join the optional but federally endorsed General Procurement Agreement (GPA). Kim (2009) conjectured that governments as political actors are more inclined to support protectionist measures when under high political pressures, and subsequently more open to political support, lobbying and illegal bribes. When those pressures are less manifest, Kim believes state governments have greater incentives to join GPA as this brings in benefits for consumers, due to both better prices and lesser likelihood of corruption. He builds a measure of ‘political competition’ (while accounting for other possible protectionist pressures such as foreign employment, union strength, economic insecurity) and finds strong empirical support for his ‘political competition hypothesis’, whereby the existence of strong party rivalry enhances the propensity for governments to favour short-run political gains at the expense of consumers in a manner that undermines long-run distributed economic growth and welfare.
Even when discrimination in procurement markets is concealed (‘de facto’), major costs to the public might result. Significant challenges have been brought to courts in the US by companies arguing that they had made largely superior bids and were excluded from specific state procurements contracts, the states themselves arguing that they were pursuing ‘legitimate state interest’. Of course, their ability to legally demonstrate that they were acting in the public’s interest depends again on the clarity of those objectives, the evidence they have that decisions were made with integrity (based on evidence, not political discretion), the logic of which applies equally to regions and to States (Abutabenjeh et al., 2017; McCrudden, 2007; Qiao et al., 2009).

3. The choice between discriminating to back ‘buy-local’ or adopt a neutral procurement approach

This dilemma follows directly from the one above, and follow the literature in reaffirming the dangerous and potentially costly connection between favouritism and corruption (even when setting aside the potential for trade-related losses). Several researchers examined in chapter 4 suggest that preferential procurement programs have serious negative consequences for the ‘public interest’ that can create significant costs for the administration of public affairs; which ought to be considered when embarking on the procurement favouring journey, even if they are difficult to measure. It is typical for those in charge of devising policy tools aimed at assisting regions or states struggling socially or economically to display an utter lack of realism about both the ability of public officials and bureaucrats to define public interest and their propensity to actually pursue it. Researchers reviewed in chapter 4 often referred to the celebrated ‘capture theory’ to suggest that a large proportion of agendas and beliefs about the benefits of preferencing local businesses or workers rarely emanate from legitimate analysis or credible evidence that the policies they pursue achieve much for their regions or jurisdictions – and that they are almost universally driven and subsequently ‘captured’ by interest groups. Choices and decisions about policy system designs require that realistic assumptions be adopted regarding agent opportunism (within the private and public sector), government agency capabilities (imperfect ability to map the net benefits, potential distortions and consequences of policy decisions), agenda flexibility (capacity to admit mistake and change course on the basis of such acknowledgment), impacts on public confidence, etc.

CASE STUDY: Motivations behind local preferencing: Private interests or demonstrated outcomes?

In the US, Qiao et al. (2009) have stressed the need for empirical studies of preferential procurement programs and their impact, even when actions are poorly documented, and their rationale is ambiguous. They mention a number of surveys conducted with procurement officers (the real and understated experts in that field) to seek their opinions about the legitimacy of various preferencing policies. The National Association of State Purchasing Officials (NASPO 1999) had taken the view that it is unacceptable that “there is no substantial body of data” to suggest the gain for the preferential group is worth the cost incurred by taxpayers, including the losses due to restricted competition. The ongoing absence of evidence, a few decades after those significant comments were made, that would
endorse public interest benefits arising from the quasi-universal local discrimination characterising public procurement remains the most telling indication that public accountability is at risk.

Qiao et al. (2009) note that in contrast to other controversial measures and critical policy domains that are suspected to impose considerable costs to the public, such dearth of evidence is inconceivable. They argue that one would expect advocates for or against such significant procurement-related policies to typically produce major empirical studies supporting their respective positions, as similar issues usually attract several U.S. federally-sponsored investigations and research reports that pave the way to greater transparency. They wonder why this is not the case with research on public procurement policies, suggesting that it is perhaps in the interest of those capturing the value of those flawed policies to maintain such unsubstantiated beliefs.

In choosing whether favouring locals is justified, and which discriminatory options would be expected to maintain a balance between political needs to help locals and the public interest, including that of consumers and taxpayers, other costs must be restated:

- It is expected that favouring compromises the value (in cost-quality-delivery terms) of the good or service produced (otherwise no purposeful favouritism would be necessary), and the value of that public loss ought to be transparently evaluated;

- It is likely that some enterprises will attempt to circumvent to policies by eluding definitions, for instance opening an office or having an address in a new location to be considered a ‘local’, the value of which and the net contribution to the economy is questionable. It is also possible that inefficient or unscrupulous ‘local’ businesses will initially make uneconomical bids (that they cannot profitably justify) and use outside help (from purchases or partnerships) to fulfil the targets set by procurement, thereby breaching their ‘local’ status. Generally, competitors (and sufficiently competent procurement authorities) eventually realise this, and it leads to either compliance or legal redress costs when, depending on the jurisdiction’s means and inclination; and,

- The prospect that excluding external players might result in lesser regional innovation (and diminution in regional competitiveness), reduced competition between local businesses leading to higher prices for local consumers, increased dependency of local firms on government procurement markets, etc. are all possibilities that ought to be modelled (ex ante) and evidenced (ex post).

As suggested above, one angle that can become particularly problematic for local, regional or smaller jurisdictions attempting to operate transparently has to do with first ‘defining’ and subsequently managing the understanding of ‘local’. Disagreements surrounding those interpretations have generated much controversy and operational definitions often clash with public sentiment about what matters and how attached to a place a ‘local’ must be (being there, having an address there, employing there, spending there, having a history there, etc.). When explicitly discriminating, public procurement design and policies must not only be crystal clear about every single aspect of what ‘local’ entails (as every opportunity to exploit weaknesses will be tested), but also prepare for the most likely reactions to policy design, and anticipate endeavours to circumvent them such as those involving changing business addresses or names, or opening subsidiaries and shopfronts to be legally protected and
administratively fulfilling bid conditions without much of a genuine footprint in a region or locality. Not only this can disadvantage local businesses that have remained small and loyal to a region but could not compete with new opportunistic entrants, it can also generate important distortions when regional, state and national agendas (who have their own and potentially incompatible views on what is ‘local’), but also it could result in considerable red tape for businesses aiming to satisfy multiple-level authorities, for compliance and lead to legal ex post deliberations when businesses feel they have been disadvantaged by bureaucratic incompetence.

CASE STUDIES: Local preferencing, local capabilities, and local interests

The observation of recurring private business practices deemed unethical (for instance opening shopfronts in locations to access procurement markets without commensurate economic activity), of weak institutional compliance and quasi-universal absence of evidence on economic development impacts suggest that these issues are all linked to each other. In fact the vagueness or limited suitability of definitions of ‘local’ prevent researchers to articulate what local public interest might be, and inhibit later attempts to evaluate the effectiveness of specific public procurement policies; in the same way they undermine compliance efficacy. Such deficiencies associated with the public procurement process have caused Grandia & Meehan (2017) to argue that this field lacks strategic maturity, as those weaknesses prevent both proponents or detractors from being able to debate how to define success, and when to support its use (as a policy instrument) and when not.

Closer to home, the Western Australian Auditor General reported (2017) on the effectiveness of government procurement initiatives in delivering local content and employment for the sake of stimulating sustained local/regional business activity, and reported on inconsistency issues surrounding that topic. It found that lack of clarity and guidance about the terminology made it impossible to blame those implementing (in compliance terms) but obviously lead to mistakes and irregularities. The definition of local was deemed so broad that ‘companies can qualify as local despite being geographically distant’, little monitoring occurred (or was deemed possible given the vagueness of the definition) and ‘no effective consequences for, companies failing to meet their local content tender commitments’ (Western Australian Auditor General, 2017).

The implications are of course that this leaves excessive discretion to procurement officials, which opens the door to corruption. The report comments at length on the inadequacies of date, monitoring and reporting to confirm that outputs can be demonstrated (showing that local businesses ‘win’ tenders as they are favoured) but no reliable analysis of content, or value for money, or competitive advantage (the potential outcomes) is ever undertaken, or indeed could have been performed. A last reason why evaluation is impossible is that compliance itself is unfeasible, by virtue of the above (the reference to ‘no effective consequences’ above). Firms located across the State make plans to use local subcontractors to pass the procurement line, and neither proper monitoring nor compliance mechanisms (such as penalties) ensue to guarantee that the policy aiming to give work to locals is enforced. From our literature review, this appears to pretty much describe a universal situation.
The report notes some distortions on other policies or government objectives (although difficult to evaluate in monetary terms) that were most probably unexpected. These result from the policy attempting to support business located and operating in small communities which might have impeded on larger metropolitan businesses’ ability to compete even at home (in WA) against interstate and international contenders; as the larger businesses could not be favoured by WA against interstate competing firms due to Australia-wide constitutional protections and some trade agreements.

Other distortions can arise in regional contexts due to policy agendas conflicts and definitional clashes involving groups that governments are trying favour (as reported by a number of anonymous NT government sources). Not only is determining who is ‘local’ creating political turmoil, but also leads to headaches for procurement decision-makers whose authority is regularly challenged. In jurisdictions and regions with high population turnovers, the notion of being ‘local’ remains sensitive and leads to resource-wasting gesturing and some disgruntlement. Furthermore, new and established service suppliers with significant government contracts that have made decisions to open shop in regions or localities to obtain contracts will instigate repeated, and undue pressures on local governments to ‘obtain a return on their investments’ by circumventing proper ethical expectations.

4. The choice between remedial preferencing and tackling access barriers to procurement markets directly

As discussed in chapter 5, some types of preferencing aim at correcting pre-existing access barriers (perceived or real), usually based on statistically documented differentials featuring some groups that display lower propensities to lodge procurement bids and by extension to win them. Among those, preferencing small or medium businesses (SMEs) is common in many countries including Australia and typically predicated on that sort of rationale, although often confusingly intertwined with ‘buy-local’ arguments in practice. Our review identified authors having considered those issues in detail who established that in the US, the main rationale to support SMEs is based on notional fairness and perceptions that big business are unduly advantaged by policy, rather than any other well-specific logic. This explains why no specific outcomes are usually formulated behind the desire to favour SMEs, nor policy impacts specified as the simple result of seeing more SMEs involved in government markets appear to satisfy some advocates, and in a sense, can endure as long as the perception of disadvantage continues, while no structural impact is pursued.

Critiques of SME-favouring policies have argued that if specific barriers have been identified that affect SMEs more than they do to large businesses, these should be addressed through direct policy adjustment rather than undertaking more potentially purposeless procurement transfer (involving complex rules, intricate decisions and monitoring) to that sector, a process which is cumbersome and costly to the public, and yet rarely evaluated as such due to the absence of identified outcomes. Some of them also argue that those measures might be built on a fallacy as their surveys of SME entrepreneurs have shown that SMEs have good reasons – structural and often sector-specific – to not participate in public procurement markets, and show limited interest in obtaining government contracts which they perceive as relatively unattractive growth strategies. If this is the case, much
costly efforts to encourage SMES to engage with government procurement markets occur despite their better judgments, and have little impact on their intentions and goals. As discussed through multiple examples in chapter 5, such attempt to interfere with the rules of the procurement system can even backfire and create perverse outcomes or unexpected distortions (see the box just below) and it would be advisable to utilise public procurement to favour groups only if and when specific outcomes and theories of change that can be evaluated and evidenced are properly formulated.

**CASE STUDY: On the wisdom of preferencing**

An approach contemplated in the European Community to make procurement more accessible to SMES has involved replacing conventional criteria to select bids (conventionally based on lowest price and a measure of administrative burden) with a weighed formula to measure ‘most economically advantageous tender’ (MEAT) focusing on overall bid ‘quality’, and by encouraging the division of procurements vertically; in more than one contract, i.e. bite size, a typical approach to address size-related barriers undertaken when privatizing public services. While this can create additional administrative and transaction costs, it aims at allowing SMEs to bid for sub-components (they can fulfil and is therefore presumed to result in higher frequency of bids by SMEs, and higher frequency of contract awards going to SMEs. Once again, either because support for SMEs rests on unproven suppositions about barriers, or larger firms are so advanced in their adaptiveness and quality, results went completely contrarily to the intuition that justified those policies. Stake (2016, p. 1145) submits in an analysis of cross-country evidence that ‘including quality in the evaluation increases participation by large firms, while there are no significant results for micro, small or medium-sized enterprises’. Stake (2016) further warns that MEAT-type processes based on evaluating ‘quality’ entailing greater amounts of subjectivity and can open the process up to corruption, as procuring agents are in a position to exercise more discretion in the selection process itself.

In a number of cases discussed in chapter 5 (for instance Reis and Cabral 2015), empirical evidence suggested that another type of distortion can occur even when procurement interventions (such as SME targets) are put in place and result in greater SME participation and being awarded contracts. These can have the perverse effect of leading to large number of contract terminations due to poor performance at time of delivery (contracts go to SMEs incapable of fulfilling them). This not only creates further social costs, but additionally undermines the integrity of the procurement system, creates a loss of public confidence. For this review, it strongly suggests that those business which were encouraged to participate in procurement market by the favouring policy (a secondary function using the model discussed earlier in this chapter) were ill-equipped to do so, and perhaps never intended to carry the volumes, productivity, human resources management challenges that larger businesses are capable of handling.

Pickernell et al. (2011) observe that assisting SMEs is frequently proposed among a range of economic policies aimed at promoting the competitive advantage of remote or declining regions; whereby public procurement preferencing SMEs is perceived as an engine for regional growth. They disagree with that judgment and argue
that public procurement as a policy instrument seems unlikely to promote higher economic growth via SMEs, given that no significant link between procurement and small firm growth has ever been empirically substantiated. They suggest instead that focusing on small local firms can in fact entrench decline (because supporting obsolete industries and growth paths) and prevent local authorities from reaching for more sophisticated procurement demands (sometimes inescapably requiring partial services centralisation that attract a younger workforce in towns) that could have positive transformative impacts on those economies. The simplistic connection made between SMEs, buy-local and retention of young people might actually cause a clash between objectives and deliver ambiguous results.

Parallel findings have recently been anecdotally documented in northern Australia around declining regions (following mine closures) where attempts to preference local Aboriginal staff with inadequate skills and capabilities has had a negative impact on those that were competent, and have decided to leave struggling towns where government work (usually dominant in remote places) was attributed on the basis of criteria other than merit, also signalling a basic clash between the objectives of facilitating local population access to procurement markets, and retaining or growing the skills base and ultimately the population (anonymous NT government sources).

5. The choice of preferencing method

Despite the numerous cautions above about the limited ability of procurement policy designs to generate desired outcomes, it appears inevitable that political expediency and populism will persist and encourage attempts to favour certain suppliers at the expense of others and the illusion of serving public interest. A section of the literature has examined the numerous procedures used to do so and documented their differences with respect to their degree of transparency, the discretion they confer to procurers (and the risks of corruption that ensues), the level of compliance and legal institutional backup required to support them (if they are open to criticism), and the capabilities needed within the procurement authority to implement them and demonstrate value to the public.

Generic examples of preferencing methods found in the US (based on Abutabenjeh, Gordon, & Mengistu, 2017)

- One approach is a tie-bid preference ‘law’ that gives preference to in-jurisdiction bidders only if their bids are identically priced with the other non-local bidders and they are found in all the states and local governments in the US.
- Second, a percentage preference can apply a fixed percentage of the bid price to the out-of-jurisdiction firm’s bid price; the in-jurisdiction bidder is then considered the low bid if the adjusted bid is less than the actual bid price of the out-of-jurisdiction bidder. How these percentages are chosen, and whether they are adapted to suit specific objectives varies.
- Third, an absolute preference policy requires the purchasing office of the jurisdiction “to buy certain goods or services from vendors [located] within a designated area”. In such cases, how they choose how to supply...
within the in-state bidder cohort (and those from outside the state) and how they ensure that no illicit trading takes place between them ought to be transparently deliberated. Otherwise, procurement authorities and their officers would have considerable discretion (especially at the local level), which opens the door to potential exploitation. Some absolute preference laws stipulate that government must buy certain goods or services within a designated area. Historically in the US, printing has been the most common “protected” commodity, followed by coal nationally. Other choices are State-specific such as lumber and paper products for New York State and milk products in South Dakota.

- Fourth, a general preference law gives a wide range of preference to serve the interest of the jurisdiction, some of which might refer to indirect supply chain attributes, such as when a preference is to be accorded based on the origins of an input (worker type, raw material, etc.).

- Lastly, reciprocal preference laws give preference to business originating from states that do not themselves discriminate against them, by adding a percentage to (out-of-jurisdiction) vendors from states that impose preferences on their out-of-jurisdiction vendors. More than half of the US states have this type of preference laws, which shows that retaliation is very real.

As noted earlier, the review has shown that procurement objectives (as opposed to the methods selected for reasons often long forgotten) are in many cases so vague that the objectives of ensuring public interest, favouring locals, supporting economic growth, assisting regional competitive advantage are often inter-mingled and bundled incoherently as if undistinguishable. Interested private sector suppliers will attempt to exploit any such imprecisions allowing them to qualify for specific government contracts and will do so in increasingly innovative ways. This includes creating shell companies, illegitimate joint ventures, so-called black cladding in the context of Aboriginal procurement, and so on. This further undermines both the outcomes of those policies, opens the door to policy capture and corruption, and is likely to endanger public confidence. This is reiterated to underline the notion that the choice between procurement methods and their precise design should be based on definitional clarity, simple straightforward objectives (the least the better) and a credible strategy to assess success.

6. The choice to link public procurement delivery to extraneous social objectives

While seemingly praiseworthy from an aspirational viewpoint, the addition of social goals to public procurement processes is neither inconsequential (in terms of effectiveness of the primary function) nor cheap in procurement system and related bureaucratic terms. Chapter 6 shows that there has been a recent interest in using public procurement to support disadvantaged groups, socially or economically. It also indicates that there are many reasons to be concerned about those on a number of grounds. Firstly, concerns about the ability of government agencies (especially local or regional ones) to ascertain the impact of such proposals on the primary function (the public interest served by the effective purchase and delivery of goods and services). Secondly the competencies of those same agencies to ascertain what is socially ‘worthy’; and to demonstrate that procurement is a cost-effective way to transform social circumstances that other policy channels have failed to progress. In making the critical decision to attempt to address social causes (not directly connected to the primary procurement mandate), it is incumbent to establish:
- Whether the linking between mandates creates substantive costs to the public (lower cost-effectiveness in the primary delivery) and costly bureaucratic expansion;
- Whether the government has a clear mandate to support such specific social agenda (the literature reviewed showed that legitimacy is central to effective implementation by procurement authorities, and that inappropriate behaviour by procurement managers is significantly correlated with their own perceptions, and that of the public, that their government might be pursuing agendas that were not publicly endorsed, or they were not elected to carry);
- If the linking process is claimed to be generating the desired outcomes; that this is backed by proper evaluation procedures, themselves based on a clear impact logic mapping and substantiated by credible and independent evidence – a rare occurrence; and,
- That intervening to support disadvantaged community members through a public procurement policy intervention is superior (either more effective or cheaper) to other conceivable interventions or policy instruments.

It is important to face the fact that the capabilities required to address complex social problems are considerable, and that their amalgamation with, and deployment through, private suppliers’ production activities appears hazardous at best. This is particularly likely to be the case when political and social sensitivities prevent political clarity of objectives (as discussed in the chapter 7 cases of Aboriginal procurement), and the contexts of local and regional development exacerbate the impact of limited capabilities and the lack of strategic maturity characterising the field of public procurement.

**CASE STUDIES: Affirmative actions for women through public procurement in the US**

Because of the relatively long history of those policies, several rigorous empirical studies (sometimes quite complex) have been conducted to establish their impact and effectiveness, some of which create significant doubts about policy usefulness:

- Orser, Riding, and Weeks (2018) combine statistical modelling and stakeholders’ interviews to examine the efficacy of gender-based federal procurement policies in the United States, which aimed at redressing discrimination and economic exclusion applying to women, and for which the United States government has targeted 23% of its annual half-trillion dollar spend to SMEs and 5% of its spend to women-owned businesses. Their overall findings indicate that none of the various certifications increased either bid frequency or bid success by women. After arguing that so-called pre-existing statistical gaps in accessing public procurement markets by male- and female-led SMEs were misinterpreted by policy advocates, the authors conclude that these public procurement targets are wasted as policies. They also note that repeated claims of success made by the agencies themselves endorsing their own policies are never backed by evidence. They call for critical program reviews and increased reporting and transparency, given that the actual gap between rhetoric and program promotion serve political ambitions without using consistent theory or data. They further note that the fact that the US government itself has, over
many decades, failed to describe a convincing theory of ‘what changes’ were required in the form of a program logic or otherwise, has failed to implement a data-based evidence strategy to allow ongoing evaluation. Meanwhile that the agencies in charge kept on making fervent claims based on poor output indicators rather than actual outcomes. This provides a sobering warning and indication of the extent and limitations that local or regional jurisdictions would face if themselves embarking in conducting such ambitious transformative interventions.

- Marion (2009) considers the useful question “How does affirmative action affect the cost of government contracting?” and estimates the efficiency loss of those discrimination policies by comparing (after adjustments) road construction project costs. He finds that a road construction project costs the government 5.6% less to complete after the elimination of the affirmative action program in California, a larger difference than expected which corresponds to savings of around $64 million in two years. Marion establishes that this is not due to differences in productivity between genders (or between discriminated and non-discriminated businesses), but simply to the impact that discrimination had on reducing the total number of bidders resulting in empirically verified larger concentration of bidding businesses leading to higher bid costs.

7. The decision to invest in capabilities required to effectively and transparently administer the procurement process, to undertake monitoring and to implement dependable evaluations

The choice of level of investment in procurement capabilities a jurisdiction is willing to make is central to the credibility of its claims about furthering the public interest. It is absolutely essential to support any assertions about effectiveness applicable to both primary and secondary functions. It should be predominant in the efforts of any procurement authority (or local-regional jurisdiction) attempting to justify to use procurement instruments to pursue policy objectives, and convince the public of the rationale of their policy directions, let alone demonstrate to probing treasury departments that they are embarking on a sensible course of action when selecting the scope of those procurement activities and the decision methods to be utilised. Given the fact that the most important determinant of policy success is likely to be the ability to learn and adapt to new challenges, to fluctuating community aspirations and to shifting competitive contexts, the effectiveness of public procurement policy-making will depend crucially on the design of, and resources dedicated towards those specific evaluation capabilities.

Demonstrating an ability to systematically reconsider the 7 choices and trade-offs discussed in this section (and assess realistically the capabilities required to document outputs and outcomes for primary and secondary functions using the 2X2 matrix) should be considered a prerequisite to any consideration of extending the role of public procurement. In fact, we would argue that adding secondary functions to public procurement should not be contemplated at all unless a theory of change is correctly developed, and an investment in evaluation competencies is undertaken, that would allow to properly inform the public and industry about policy rationale, outcomes and worth. Given the assortment of cases reviewed that featured inadequate or inexistent theories of change (and the surprises or distortions that arose much later when empirical research was undertaken), we can assess that those capabilities are generally deficient (see also the findings of Lesh 2018, about evidence-based
policy in general). We also ultimately espouse the view that due to the inability (and potentially unwillingness) to verify, learn and engage with their full complexity, less interferences with the procurement process is likely to be the safest policy (probably the best by default, but this cannot be demonstrated). Case after case reviewed across locations and contexts promised evaluations and pledged future evidence-gathering efforts that were ignored or abandoned, the reasons for which are never really explained (see chapter 7 cases for instance). This has resulted in some researchers and commentators alleging that perhaps public procurement has become popular specifically for its ability to avoid scrutiny and legitimate policy processes. For these reasons, the onus of the proof regarding policy effectiveness should reside with the proponents of public procurement scope expansion, and we conclude that public authorities should exercise extreme caution with the precipitous appeal and popularity of that policy instrument to achieve poorly enunciated and theorised socio-economic goals.
References


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