

ARTÍCULO ACEPTADO

Managing Public Values in Public-Private Partnerships: Do Public Authorities Succeed?

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Managing Public Values in Public-Private Partnerships: Do Public Authorities Succeed?¹

Salvador Parrado y Anne-Marie Reynaers²

Abstract

Using the policy instrument of public-private partnerships (PPPs), governments achieve their policy goals by delegating the responsibility for the delivery of public infrastructure and service provision to private consortia. PPPs, as hybrid institutions, embody principal-agent challenges in the implementation of public policies given that private agents may have different goals than bureaucracies. Governments need to find ways of managing consortia so that they implement policy goals despite inherent information asymmetry and in the presence of different (conflictual) institutional logics: state versus market. Governments might not always succeed in overcoming these conflicts and their failure to achieve avowed policy goals may harm public values such as accountability, transparency, responsibility, responsiveness, and quality. In order to empirically determine to what extent governments succeed in safeguarding public values in PPPs, a multiple case study involving seven DBFMO projects in Spain and the Netherlands has been employed. The analysis demonstrates that governments exercise control over the operations of the private consortia and, overall, can account for their results and are

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able to impose a state 'logic'. However, this does not happen at the outset, and not all public values are preserved simultaneously.

Keywords: Private-public partnerships, public values, accountability, transparency, responsiveness, quality

Resumen

Utilizando el instrumento de los Partenariados Público-Privados (PPPs) del tipo de contrato concesional, los gobiernos logran sus objetivos de política pública cuando delegan la responsabilidad sobre la construcción de infraestructura pública y la provisión de servicios a consorcios privados. Los PPPs, como instituciones híbridas, incorporan desafíos de agente principal en la implementación de políticas públicas, dado que los agentes privados pueden tener diferentes metas a las burocracias. Los gobiernos deben encontrar formas de gestionar los consorcios privados para que implementen objetivos de política pública a pesar de la asimetría de información inherente en las relaciones principal-agente y en presencia de diferentes lógicas institucionales (conflictivas): Estado versus Mercado. Es posible que los gobiernos no siempre tengan éxito en la superación de estos conflictos y su fracaso para lograr los objetivos de política pública declarados puede dañar los valores públicos, como la rendición de cuentas, la transparencia, la responsabilidad, la capacidad de respuesta y la calidad. Para determinar empíricamente en qué medida los gobiernos logran salvaguardar los valores públicos en los PPPs, se ha empleado un estudio de caso múltiple que involucra siete proyectos concesionales en España y los Países Bajos. El análisis demuestra que los gobiernos ejercen control sobre las operaciones de los consorcios privados y, en general, pueden dar cuenta de sus resultados y pueden imponer una "lógica" estatal. Sin embargo, esto no sucede desde el principio, y no todos los valores públicos se conservan simultáneamente.

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Palabras clave: Asociaciones público-privadas, valores públicos, rendición de cuentas, transparencia, capacidad de respuesta, calidad.

Introduction

Delivering public services or infrastructures through public-private partnerships (PPPs) has become popular in many countries. Some suggest that cooperation with the private sector or the implementation of private sector management techniques, both institutionalized in a specific type of PPP known as Design-Build-Finance-Operate-Maintain contracts (DBFMO), might harm public values (Collins and Butler 2003, Frederickson 1999). To the contrary, several scholars suggest that public values can be safeguarded or even strengthened through the use of private sector management techniques (such as performance management), and collaboration with the private sector (Hirsch and Osborne 2000).

PPPs are a popular topic of study (Wang et al. 2018, Willems and Van Dooren 2016, Lohmann and Rötzel 2018, Hodge and Greve 2017), as are public values (Nabatchi 2012, Jørgensen and Bozeman 2007, De Graaf and Paanakker 2015). Research on the relationship between PPPs and public values, however, is relatively scarce. Most contributions consider one public value in a single case study in one country only (Reynaers 2014, Reynaers and Grimmelikhuijsen 2015), and the number of studies that examine even one public value is low. Using social network analysis, Wang et al. (2018) demonstrate that the co-occurrence of public value with PPP is low. Accountability, for example, appears once and responsiveness/renegotiation twice, while quality, responsibility, and transparency do not emerge at all in a meta-analysis of the highest impact articles in public administration and political science in recent years (Wang et al. 2018).

DBFMOs, as instruments through which policy implementation takes place, incorporate the logic of market bureaucracy identified by Considine and Lewis (1999). This logic rests on competition, contracts as to form of control, and price as focus of service delivery. Private actors are increasingly in charge of the

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implementation of public policies (Verbruggen and Havinga 2017). Different generations of policy implementation studies (Howlett 2019) have dealt with implementation chains of bureaucratic actors only, albeit often from different levels of government. The hurdles of the implementation paradox are well known from the pioneer study from Pressman and Wildavsky (1984), but there is a gap in the literature on how private actors might subvert the outputs of policy implementation by giving advantage to private over public values. Exceptionally, some studies have focused on the accountability of private versus public street-level bureaucrats in food safety inspection (Thomann et al. 2018), or how the implementation of the policies carried out by private and hybrid actors meet the output performance (output goals) set in the areas of food safety, telecommunications and water supply (Thomann et al. 2016). In general, the urge of Koppell (2010) to include market-based programs when studying public policies needs to be addressed and this article tries to contribute to this gap.

The question of to what extent public authorities succeed in safeguarding public values can be framed in terms of principal–agent theory. In theory, a principal relies on the agent for the provision of products and services. Principals face potential problems of non-compliance and agents' opportunistic behavior due to information asymmetry (Kiewiet and McCubbins 1991) and the embeddedness in different institutional logics. The principal-agent theory has been a common method in implementation studies (Howlett 2019) but rarely applied to private actors as agents of public bureaucracies. In this case, it helps to understand to what extent the private versus public institutional context helps to guide the actions of implementing actors (Garrow and Grusky, 2012). Following this institutional embeddedness, the pursue of public values of the ideal-typical 'state logic' may conflict with the 'market logic' that focuses on profit and private efficiencies (Thomann et al. 2016). Information asymmetry of the principal-agent framework, translated into the implementation of policies by private-hybrid actors, would entail the dominance of the 'market' over the 'state' logic. Applied to DBFMOs, a key

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question is whether the government can overcome this information asymmetry to safeguard public values adequately and impose the state 'logic'. In theory, DBFMOs provide instruments that help the government to do so. Performance monitoring, for example, might provide transparency and the application of financial discounts might help protect service quality, to name a few values. To find out how, and to what extent, governments succeed in safeguarding public values, 112 interviews between 2012 and 2018 involving seven DBFMOs are analyzed.

The rest of this paper is structured as follows. First, we explain the central features of principal-agent theory after which we reflect on the academic debate about the preservation of public values. We define the five selected values, namely, accountability, transparency, responsiveness, responsibility, and quality. The methodological section considers the case selection, the information collection, and the data analysis. The results section assesses for each value how, and to what extent, the procurer has been able (or not) to facilitate the safeguarding of public values. We reflect on the implications of our study in theoretical and practical terms in the discussion and conclusion section.

Safeguarding Public Values

Principal-Agent Theory

Fieldwork agents, either civil servants or organizations, have a considerable level of discretion in achieving the policy goal that they must implement. Principal-agent theory points at some of the weaknesses to attain an effective implementation of policy goals. In the presence of two logics (state vs market) (Thomann et al. 2016), the 'master' representing the state must overcome the classical hurdles of the principal-agent chain and the conflicts over goals, as stated by Matland (1995), that public and private sector actors may have.

The principal-agent theory combines the concepts of delegation and political control (Kiewiet and McCubbins 1991) and has been used to analyze DBFMOs but

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in a limited way (Wang et al. 2018). Through a contractual agreement, the agent operates in the name of the principal. This delegation is characterized by information asymmetry, given that the agent has more information on the actual service provision than does the principal. The agent, therefore, can behave opportunistically by exploiting information to her benefit. This opportunism may increase if the delegation provides incentives for the agent to act against the principal's preferences (Kiewiet and McCubbins 1991).

The principal acts unilaterally by choosing 'the best incentives or supervisory mechanisms to promote its objectives' to influence the agent's best response (Carpenter and Krause 2014, 9), and has a considerable influence on the institutional design by arranging the bureaucratic structure (and the contract), as well as by trying to limit the agent's power (Moe 1989). Economic incentives and governance structures are expected to align the goals of the principal and the agent (Eisenhardt 1989) and motivate agents to act in the 'right' direction (Hill and Jones 1992, 132). A management-oriented control approach is part of this framework (Davis, Donaldson and Schoorman 1997, 34). Its design eliminates the need to build trust between the actors. Through the financial incentives (payment of availability fees in the event of compliance and deductions, or penalties, in the event of non-compliance), the principal can guide the agent's activities to comply with the contractual clauses. Regular monitoring reports, periodic accountability meetings with the principal, external audits, and evaluations all facilitate the control and continuous verification of the agent's activity.

In market-like situations with contracts regulating the relationships between the principal and the agent, the implementation of policy goals is likely to respond to the "administrative implementation" model (low conflict and low policy ambiguity) according to the matrix developed by Matland (1995). However, given the inherent potential of conflicts over different logics (state vs market), this model can evolve towards the political implementation model (high conflict, low ambiguity). Like in the study of Thomann et al. (2016), our core expectations are that private agents

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implementing policy goals are likely to prioritize the market 'logic' and will produce conflicts on how public values are interpreted in the implementation of policy goals.

Public Values in DBFMOs

Van der Wal (2008, 11) defines values as 'qualities or norms that have a certain weight in the choice of action'. In relation to the adjective 'public', Reynaers and De Graaf (2014, 121) refer to those values that empirically or normatively are considered to belong to the public sector. Beck Jørgensen and Bozeman (2002) propose a selection of public values based on their relative importance in the literature. This paper, therefore, considers the values of accountability, transparency, responsiveness, contract compliance (responsibility), and quality (Beck Jørgensen and Bozeman 2007, Bevir 2010, Skelcher, Mathur and Smith 2005).

Accountability is a social relationship in which an actor feels an obligation to explain and justify their conduct to third parties (Mulgan 2003, Bovens 2007, and Aucoin and Jarvis 2005). Public authorities, for example, must account to parliament, citizens, and other fora for their expenditure, the plans they have implemented and the decisions they have taken. In DBFMO settings, although the procurer delegates certain tasks to a private consortium, it does not escape its accountability obligations. The procurer, thus, should still be able to account for the content of the project in financial, legal, and technical terms, and for the actual performance of the private consortium during the entire duration of the contract (Reynaers 2014). Managerialism is suggested to hinder accountability since the authority to make decisions is partially transferred to private companies. If the contract does not foresee the need for 'explanation' by the agent, the procurer cannot render an account properly. On the contrary, some expect PPPs to offer accountability frameworks that are stricter than those of many public organizations (Flinders 2010, Willems 2014). Empirical evidence indicates that accountability could be greater in some organizational structures owned by the private sector through (1) the

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introduction of a systematic monitoring of the agent's performance, (2) the specification of the level of service to be achieved, and (3) the application of penalties against noncompliance (Domberger and Jensen 1997, 76).

Transparency refers in this study to the availability and accuracy of information on the legal, financial, technical, and operational aspects of the project (Reynaers 2014) and relates to the availability of and access to information on the costs of providing the public service, the agreements, and the performance achieved (Acar and Robertson 2004). Some authors (Papadopoulos 2007, Hodge 2004, Altshuler and Luberhoff 2003) suggest that transparency can be deficient due to public officials' lack of interest or the provision of inadequate information by the consortium, either to avoid control or because of the confidentiality of the contracts. Reynaers and Grimmelikhuisen (2015) present a more balanced view, suggesting that transparency depends on how clearly the contract specifies what is required in terms of reporting on outputs and outcomes.

Responsiveness refers to the reaction of public authorities to the preferences and needs of citizens (Andrews and Van de Walle 2012). In relation to DBFMOs, it refers to the capacity of the procurer to adjust and renegotiate the contractual clauses to accommodate the changing needs of an administration or of the broader society. Limited empirical research shows that citizens and consumers of services perceive that the capacity to respond in public services has diminished in managerial contexts (Andrews and Van de Walle 2012, 9). In the case of long-term contracts, some academics argue that the procurer's capacity to respond decreases since governments cannot easily adjust contractual agreements retrospectively. Incoming governments take on the contracts and decisions of their predecessors that may no longer reflect a new socio-economic context or changing public needs (Hodge and Greve 2007).

Responsibility, or contract compliance, refers to the degree to which the procurer makes the consortium comply with the contractual agreements. Several scholars wonder whether governments now see their public responsibility

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discharged through private action and if they can control that action sufficiently (Debicki 2003). Brown, Potoski and Van Slyke (2010) show that the degree to which contracts do guarantee that public responsibility is executed as expected depends to a large extent on the integrity or quality of the contract. In the context of DBFMOs, Hood and McGarvey (2002) illustrate the opportunism of the contracting parties blaming each other and shirking responsibility. Child, Faulkner, and Tallman (2005, 55) add that responsibility itself may be at stake and that this risk is even greater when there are multiple private partners involved.

Quality denotes the degree of satisfaction of the buyer with the infrastructure and its operation (Bovaird and Löffler 2003). Privatization, contracting, concessions, and PPPs are assumed to improve the efficiency and the quality of service provision due to the participation of private companies and the use of tools such as performance-based management. At the same time, Box (1999) argues that private companies will pursue financial profit precisely at the expense of quality. This is due to the expectation that private companies will focus more on productivity than on quality, given that the former is more easily measured (Holmstrom and Milgrom 1991). It can also be attributed to the use of incomplete contracts that cannot specify the requested quality level for the long-term and for all the services. King and Pitchford (1998) suggest that the difficulties of measurement would allow the agent to reduce quality without being detected by the principal.

Methodology

We select a multiple case study approach involving seven DBFMO projects in Spain and the Netherlands to elucidate whether findings are case-specific or repeated in other cases (Eisenhardt and Graebner 2007, 27). Five of the seven DBFMOs concern utility service buildings: one hospital with clinical and non-clinical service under DBFMO (from now on the clinical hospital), two hospitals contracting only non-clinical services (from now on the non-clinical hospitals), a detention center, and a ministry. The other two projects concern infrastructure: a highway and a water purification plant. Given that the direct interaction between the agent and principal is

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continuous in utility service building and more limited in infrastructure projects, we expect that the procurer might behave (control) differently in each case. The services delivered through the seven DBFMOs differ in nature. While the agents for the non-clinical hospital, the detention center, and the ministry provide only secondary services (such as cleaning and catering), the private consortia of the clinical hospital, the highway, and the water purification plant execute primary organizational tasks: medical care, highway maintenance, and water purification. Given the inherent difficulties and wider scope of the tasks of the latter, we expect that there will be variation in the way in which the procurer controls the agent.

We have analyzed qualitative data derived from 112 interviews (appendix I for the interview guide and table 1 for the distribution of interviewees) held between 2012 and 2018. For the analysis, we used MAXQDA (see appendix II for the coding tree). In each project, interviews were held with actors working for either the procurer or the private consortium, or external advisors that could work for either. The interviews had an average length of one hour and were transcribed verbatim. The selection of the respondents followed the snowball sampling technique in all cases (Guest, Bunce and Johnson 2006, 62).

Table 1 Number of interviewees per case

	Clinical hospital #1	Clinical hospital #2	Non-clinical hospital	Detention center	Ministry of Finance	Highway	Water purification plant
Procurer	10	8	15	9	10	12	4
Private consortium	3	0	4	2	8	5	5
External advisors	3	0	3	0	7	1	3
TOTAL	16	8	22	11	25	18	12

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Findings: Relative High Control over DBFMOs

Greater Accountability than in Direct Service Provision

The public procurer is not always able to account for the content of the contractual agreement itself. In some cases, the procurer depends extensively on external legal and financial advice. Lack of experience, skills, or time forced the public procurer to contract advisors in order to handle the legal, technical, and financial complexity of the contracts. The dependence on external consultants and their involvement during the contract design and the renegotiation phase seem to have hampered accountability. Public officials found it hard to understand the agreements, rules, and financial mechanisms. This loss of accountability was overcome in the case of the Ministry of Finance and the two hospitals by a proactive procurer assuming leadership and interacting continuously with the external advisors hired during the contract writing phase. A respondent said:

During the evaluation, the private parties told us they were surprised by how professional we were. But we have prepared this very well. And we always wanted to be one step ahead (Project Director Ministry of Finance).

Moreover, in the case of the hospitals, the use of external advisors was considered a priority in order to fulfill the political mandate of simultaneously contracting for five and eight hospitals in two waves. The in-house expertise, even when available, was unable to cope with such a demanding task and the financial formula also represented a challenge for the State lawyers.

At first, the government was hiring external advisors to help them with the contracts of seven hospitals. Later, they hired external consultants to monitor all aspects of the contract including the building of the infrastructure and the compliance with the performance indicators during the operational phase. (External advisor of several hospitals).

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The long-term nature of the project, combined with the involvement of many actors during a specific project phase and the resultant loss of continuity, hindered long-term accountability. In most DBFMOs, the 'memory of the project' got lost with the exodus of project members. In the Detention Center project, for example, very few people in charge of the operation were involved during the preparation of the project. These practitioners exit the organization immediately after the contract closure, leaving only limited information about the preparation of the project and the design of the contract. A respondent mentioned to us something common to all concessions:

The tricky thing is that you make agreements in the tender phase. Then, everyone goes his own way. There are few people who are constantly involved and that is difficult because you have certain ideas and you try to put them on paper, but that does not mean that it perfectly matches what is in the contract (Project Director Detention Center).

Knowledge, necessary to be held accountable, leaves the organization once key actors move on. This problem can be overcome when those implicated during the procurement phase remain to run the contract. Accountability can also be enhanced when information on the procurement phase is shared with the actors responsible for the operation of the contract.

All cases showed that the monitoring mechanisms did not always function as expected in the initial phase of the service operation. This initially hindered the procurers' ability to account for the expenses and for the performance of the consortium. The malfunctioning of monitoring mechanisms was either the result of mistakes in its design or its wrong implementation. Initially, in some Dutch cases, there was a complete absence of monitoring mechanisms. A respondent revealed the following:

In the beginning, we were not able to explain exactly what was done and where our money went. But that had to do with the fact that it was the first

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time we did this. So, all those mechanisms still had to be adjusted (Contract manager Highway).

However, the eventual implementation of these mechanisms, the use of external audits, and more intensive employment of inspectors from the relevant authority, according to all interviewees, caused the procurer to better account for performance in a DBFMO than in direct service delivery. In the latter, these mechanisms are more limited or even absent. As regards the clinical services, one of the hospitals was subject to the same management contracts as the rest of the health system and this ensured similar levels of accountability.

Financial Mechanisms are not Transparent but give More Information on Performance

Transparency is fundamentally fostered by the need to reveal in the contract everything that is going to be measured and evaluated throughout its life. This requires detailed work that also has the virtue – or the disadvantage – of highlighting errors included in the clauses. In general, this is not a problem. If anomalies are detected, changes can be made to the contract, provided that the agreement with the private consortium is financially compensated. Because of the long-term character of the projects and the use of performance-related pay, the procurer must determine and lay down the financial, juridical, and technical aspects of the project prior to the actual start of the operation.

The use of output specifications decreases input transparency while increasing results transparency. The loss of input transparency can be compensated for. In fact, many procurers occasionally include clauses with detailed input specifications that leave the consortium with no room for interpretation. The output specifications often contain qualitative norms (surfaces must be clean) as well as quantitative standards (a highway lane cannot be interrupted more than one hour). Whereas qualitative norms that are hard to measure can harm the transparency of the output specifications, quantitative norms contribute to the transparency of the

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specifications. This was demonstrated in the case of the water purification plant, the highway and the hospitals. Repeated interactions through monitoring helped in all cases to enhance the transparency of both output and input specifications. A respondent from the purification plant highlighted:

At [name company] it is much more objective [than in a project where qualitative output specifications are used]. People measure the quality of the wastewater that comes in and they measure what comes out. That is quantitative. These measurements are checked by an independent inspector once every six months. Stamp. Staple. Satisfied. Those numbers are processed in a report. [Name company] submits a technical report every month. It demonstrates what we have done, whether we've removed nitrogen, loose material, how many pumps have failed, or whether requirements have been met. That is purely technical. The water board can check that, and they can request any type of information at any time (General Director Private Consortium).

In line with this, a respondent from the non-clinical hospital described:

It is a transparent process. We send different reports every month. We wash all textile, for example, and we send a ticket that indicated the number of kilos of clothes we washed. All this is monitored by a technical unit, contracted to a company by the government. The procurer and our company have also representatives in this unit for doing the monitoring (Director Non-Clinical Hospital).

Financial modelling is not susceptible to easy comprehension by those who do not have the required skills. Although such modelling may limit transparency, procurers now know the cost of services, something that is unusual in direct service provision. Therefore, in this respect, there is greater financial transparency. The problem is that in the public sector, normally, there is no built-in capacity to understand these financial models.

Long-term financial planning provides for transparency in the sense that, with the exception of variable costs, the procurers know how much money will be spent

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during the following 20 to 30 years. However, some cases demonstrate that what that money buys is not quite transparent, since the availability fee includes past, current, and future costs. The highway and detention center cases showed that the procurer pays for the replacement of items in the future, even though the consortium does not guarantee that such replacements will be provided.

You say something has a lifetime of 5 years and the contract lasts 20 years so they [the consortium] must replace it 4 times. The consortium calculates a price for this replacement, but they do not want to make explicit agreements on the actual replacement (Project Director Detention Center).

However, in hospitals under DBFMO contracts, items have to be replaced immediately, whereas traditional public hospitals have outdated and damaged furniture and equipment. Although the level of the availability fee is transparent in the sense that what will be paid is set out on paper, the accuracy of the figure was questioned in each Dutch case. In addition, the detention centre and highway projects revealed that the procurer has not always been satisfied with the level of transparency provided by the consortium when it comes to the pricing of additional work. In some of the Dutch cases, it is not always clear whether charges reflect market prices or whether the consortium included risk-related costs that had already been paid for in the initial bid. In the detention centre project, the procurer wondered whether their own organization knew if it had saved any money at all. In the hospitals, since there have been relatively few changes demanding additional investment or the acquisition of additional material, interviewees did not express any surprise about this.

Performance monitoring and reporting to the procurer seems to increase transparency in comparison with direct service delivery where often there is no such monitoring. However, the actual achievement of transparency depends on the design and implementation of the monitoring plan.

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In all the Dutch cases, the private consortium submits the monitoring report to the procurer. Apart from the water project, the accuracy of those reports could not be guaranteed. Occasional discrepancies between performance reports produced by the consortium and those provided by the procurer signalled the need for additional measures or external evaluations. In the case of the water project, the consortium was willing to provide as much transparency as requested to establish trust and a good reputation. Finally, although performance monitoring reports provide transparency, the sheer amount of paperwork was difficult to process, and in the case of the highway, for example, was considered to hamper transparency.

In the hospitals, the contract allowed for an initial period of six months in which deductions and sanctions were not applied. During this stage, the monitoring instrument was refined. Unlike the Dutch cases, a third party (another contractor from the procurer) is responsible for reporting non-compliance in the hospitals. Furthermore, in the DBFMOs in which only non-clinical services were contracted, the health staff oversee the non-compliance complaint process. The private consortium has to fix the problem or a deduction in the availability fees is automatically applied. Although there have been discussions around the use of particular performance indicators and their interpretation, the system is highly transparent for both contractual parties. For the clinical services, the hospital is subject to a generic monitoring system for clinical effectiveness and perceived quality. It is subject to the similar transparency mechanisms as the rest of public hospitals: bilateral monitoring meetings and the publication of performance information is published online.

Long-term Contracts are not Promptly Responsive to Societal Challenges

Since contractual changes or the adaptation of performance standards have an immediate effect on the financial model and involve an administrative and financial burden, changes should be avoided as much as possible. Prudence with

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respect to contractual changes could imply a decrease in response capacity, but, in the four Dutch cases the contract and performance standards have been subject to constant change, given that the legislation is relatively lenient on this. The Spanish hospitals face greater restrictions over renegotiating clauses since contract law has rigid rules about any party requesting a change. Such renegotiation could alter the final price paid, and this would undermine the principle of fair competition under which the contract was awarded.

Despite the possibility of changing the contract and the output specifications during any of the project phases, in none of the four Dutch cases did the procurer feel it was 'in command' of the project. In the case of the Detention Center, for example, the procurer said it felt it was no longer the boss in its own home:

You feel you have tied hands in your own home (Director Detention Center)

This feeling was not expressed when discussing hospital projects. This might be helped by the fact that most managers from the procurer and the consortium are physicians who understand what can be done in clinical terms (for the clinical DBFMOs) and what services are required from the private consortium.

All change requests from procurers are subject to sometimes long and costly negotiations that prevent the demand being met directly. In addition, long-term integrated contracting does not provide room for manoeuvre when the procurer wants to cut its costs. The consortium's business plan calculates the profits based on the initial contract and the output specifications. Therefore, the procurer cannot reduce the availability fee at will. A respondent mentioned to us:

Central Government decided to cut budgets. So, we had to select the most relevant roads in order to decide where the money should go. In May it was decided that all the roads in the North had to turn off the lightning. Normally you would say, "we turn off the lights, less consumption, less spending." But that is not the case with DBFMOs. We have a contract and when the consortium tells us that they have not charged anything for lighting, then we

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can't save any money there. We must pay the amount previously established. (Contract Managers Highway).

The long-term nature of the contract that establishes the legal, financial, and technical parameters of the project for its entire duration also limits political influence. In the case of the water purification plant, for example, politicians at the Water Board could not introduce their own preferences at the beginning of a new term. Although this was perceived positively in terms of continuity in the DBFMO, the members of the water board accepted only with difficulty that their influence on the project had diminished. In the case of the highway, the contractual agreement between the administration and the consortium exceeded the territorial scope of the province where it had been built. This reduced the manoeuvring room of local politicians and public managers. Since the inception of the hospital DBFMOs, the same political party has remained in power, and in those cases, the politicians have not demanded any change to the contracts, according to the interviewees.

The responsibility of the Administration is challenged

In general, private consortia tend to do what is requested in the contract but several factors create hurdles. Both the contract clauses and the standards laid down should indicate the precise responsibilities of the private consortium. But they are often ambiguous or incomplete and give rise to a discussion between the procurer and the contractor about how they are to be interpreted. These discussions are more constructive in some projects than in others, but we do not discern clear patterns in the reasons for opinions diverging. In one of the hospitals, the consortium went to the tribunals to resolve the dispute, but this is a minority.

In some hospitals, like [name of the hospitals], the managers from the consortium did not agree with the indicators and the deductions from the fees. Consequently, they went to the tribunals. However, this only happens in 10%

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of the cases (External advisor who worked in the monitoring unit for several hospitals).

The companies of the private consortium often disagree about the allocation of internal responsibilities. With the exception of the highway, the private consortia were divided internally into two groups: design and construction and operation and maintenance. Given this delimitation, the responsibility of the design–construction group towards the other partners ceased as soon as the operational phase began. When the irregularities deriving from the construction phase had a negative impact on the operation, the company providing the service suffered the financial consequences, particularly in the Dutch cases. A respondent said:

In the design phase [the members of the consortium] have not exchanged interests beforehand. For example, they used white paint on the walls. Many people pass by, so they get easily damaged. And after a few months, the Director complained that the walls looked dirty. So, they asked the cleaning company to clean the walls or to paint them. But the cleaning company says that it's the responsibility of the construction company that decided to use this type of paint. They have an internal problem that becomes our problem. (Project Director Detention Center).

This was not apparent in the hospitals since the different companies created a consortium in which the main contractor, often a building company in the non-clinical DBFMO and a health group in the clinical hospital, would subcontract the operational services to third parties. Therefore, although the contractor was technically a conglomerate of companies, one part of the private consortium was responsible for everything. Managers from the procurer side often claimed that they never had to worry about the internal problems of the consortium since the DBFMO contract assigned clear responsibility.

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PPPs Deliver Infrastructure of Quality

Whereas there is a high level of satisfaction across all seven projects with the quality of the infrastructure, this is not the case with the operational aspects of the projects. In the case of the detention center, the quality of the operation was deemed disappointing, except for food supply. A respondent said:

At a certain moment, their service delivery was so bad, we could pay several tons from the availability fee less. But I don't want that money. I want good service delivery (Contract Manager Detention Center).

Irregularities in operational quality could be the result of scant attention paid to the service delivery phase during the project preparation, the absence of guidance in relation to the transition from construction to operation, or ambiguity in output specifications. In the case of the Ministry of Finance, the poor quality of the operation was attributed to a lack of attention to the operational phase by both the procurer and the consortium during the project preparation and construction phases, lack of communication about the operational phase between consortium partners, lack of experience of service provision in the context of DBFMO, and ambiguous norms. However, in the hospitals, the procurer was happy with the level of operational quality that is assessed monthly by a commission composed of the procurer, the private consortium, and a third (private) party.

The chief executive of one non-clinical hospital said that:

The quality of this type of hospitals is higher than in traditional hospitals. The level of control, audits and inspections alongside the economic incentives make them strive for quality.

In the case of the highway and the water project, the operational phase was less problematic in terms of quality. Although in the former case, ambiguous output specifications led to discussion, the quality of maintenance seems to be an

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improvement over traditional projects, thanks to innovative solutions and rapid problem-solving. In the water project, direct involvement of the operating company in that preparation seems to have contributed to satisfactory results. In both cases, the relative straightforwardness of the operational phase and corresponding quantitative output criteria may have contributed to the quality of the overall project. Finally, the relative isolation from users' opinion during the operational phase seems to have a positive effect on the perception of quality. In the hospital, the detention centre, and the Ministry of Finance project, users also judge the quality of the service operation. For instance, systematically, the hospitals under DBFMO contracts display higher levels of patient satisfaction with the infrastructure, auxiliary services, and clinical attention than hospitals providing services directly (Parrado and Reynaers 2018).

Performance-related payment, applied in DBFMOs, in theory, helps the procurer to manage quality. The cases demonstrate, though, that the effectiveness of this tool for enforcing or improving quality is not automatically guaranteed in the Dutch cases, but it is a relevant lever of quality policies in the hospitals. In the case of the detention center, the Ministry of Finance, and the highway, fines did not always lead directly to solutions. The inconsistent application of fines and the difficulty in accurately calculating the appropriate level of fine might have undermined its effectiveness. A respondent from the Ministry of Finance stressed:

There were some fines but sometimes the procurer doesn't use those fines. At some point, those fines didn't work any longer. Then we decided to hire a mediator (Project Member Ministry of Finance).

In line with this, a contract manager from the concession company from the clinical hospital:

There were absurd cases. Sometimes they called us "there is a problem with an envelope with cola-cao [chocolate powder] and this patient is having

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breakfast” or something like that. And it would cost us, according to the contract, let’s say 20.000 euros. That is absurd. If the fines are not designed correctly it can cause strange situations (Contract Manager Concession Company Clinical Hospital).

In hospitals, both clinical and non-clinical services are responsive to performance-related payment. In non-clinical services, automatic sanctions and deductions, even when provoked by the non-conformity of the private consortium, provide continuous pressure to perform to the standard required by the contract. For clinical services, performance standards for clinical effectiveness, patient safety, and patient perception of the services are part of the management contracts for all hospitals. DBFMOs have no problem in meeting the targets of these annual management contracts, which they consider a bit limited and probably more adapted to ‘inefficient’ public hospitals (Parrado and Reynaers 2018).

Conclusions and Discussion of Results

DBFMOs are contractual instruments in which private agents implement policy goals. Tied by the contract, it is expected that they can have a relatively low level of conflict over goals and these goals should be unambiguous as predicted by the implementation administrative model from Matland (1995). However, potential conflicts over the safeguard of public values are at the heart of this paper when assessing the capacity of state actors to impose the state ‘logic’ over the market one (Thomann 2016 et al.)

The answer to whether public authorities can safeguard or even strengthen public values through DBFMOs is not the same for all public values under consideration. The answer also depends on the type of relationship between the principal (the procurer) and the agent (the private consortium). That relationship is based upon the idea that results desired by the principal are achieved, power is delegated to the agent, and the public authority has control over the level of

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performance. Table 2 summarizes which conditions or instruments help safeguard or might harm the five values under scrutiny in this study.

Table 2 Conditions that influence the safeguarding of public values

	Threatens public values	Fosters public values
Accountability	<ul style="list-style-type: none"> • Dependency on external advisors • Discontinuity of involvement actors • Incorrect implementation or use of monitoring mechanisms 	<ul style="list-style-type: none"> • Build-up in-house expertise • The design and implementation of the contract has continuity of actors • Use of performance management contracts • Performance monitoring
	<ul style="list-style-type: none"> • Long-term nature of the contract 	<ul style="list-style-type: none"> • External audits • Proactive procurement
Transparency	<ul style="list-style-type: none"> • Output specifications (input transparency) • Quantitative norms • Lack of build-in financial expertise • Inaccurate design or implementation of monitoring mechanisms 	<ul style="list-style-type: none"> • Output specifications (result transparency) • Qualitative norms • Financial long-term modelling • Performance-related pay • Performance monitoring • Publication of performance information online
Responsiveness	<ul style="list-style-type: none"> • Inflexible contracts • Externalization of services by the consortia • Long-term integrated nature of the contract 	<ul style="list-style-type: none"> • Flexible contracts
Responsibility	<ul style="list-style-type: none"> • Ambiguity of the output specifications and clauses 	<ul style="list-style-type: none"> • Clear-cut contract clauses

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	<ul style="list-style-type: none"> • Weak risk allocation of private consortium companies • Internal disputes (between private consortium members) • Decentralization management responsibilities private consortium members 	<ul style="list-style-type: none"> • Centralization of management responsibilities in the consortium
Quality	<ul style="list-style-type: none"> • Ambiguity in output specifications • The scant attention paid to the service delivery phase during project preparation • Absence of guidance in relation to the transition from construction to operation • Lack of communication about the operational phase between consortium partners • Lack of experience of service provision in the context of DBFMO • Inconsistent application of fines 	<ul style="list-style-type: none"> • The use of quantitative output criteria • (Room for) proposing innovative solutions • A predisposition of private consortium for rapid problem solving • Involvement of the operating company during the preparation phase • The use of performance-related pay

As a first instrument for ensuring that the agent will perform according to the delegated mandate, the principal expects the agent to account for what it is doing. In turn, the agent, closest to the sources of information, may be tempted to avoid this accountability by ensuring that the information is not transparent. The theory of political authority is not always applied perfectly in the DBFMOs. With respect to accountability, the findings indicate that, although DBFMO provides for enough mechanisms for public servants to be held accountable, its current effect depends on the way in which these mechanisms are used (Flinders 2010). The use of such

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mechanisms is not always optimal. In that respect, the suggestion of Domberger and Jensen (1997, 76) that accountability might actually be better safeguarded in NPM-inspired governance structures because of the introduction of systematic performance monitoring, the construction and use of service level specifications, and the application of mechanisms that help to prevent or effectively penalize non-compliance holds true – but only if those mechanisms are used as intended. It takes some time before the procurer gets to that stage. We found some differences in the Netherlands and in Spain. First, the principal runs the risk of losing out considerable amounts of information in the Dutch DBFMOs. On the one hand, the procurer resorts to external advisers (especially in the Netherlands), who control the meaning of the financial and legal clauses. At the same time, the consortium and its experts maximize their advantage in negotiating the contract. When this happens, the principal can exert limited influence. Second, the procurer's management team changes between the negotiation of the contract and the operational phase also limit the extent to which the procurer can be accountable for the contract, its content, and the way in which it is applied.

Transparency is crucial if the principal is to exercise control over the agent because it minimizes information asymmetry. The results show two different positions. In the hospitals, the principal has implemented a control instrument administered by a unit external to the consortium and subcontracted by the public authority. This unit, registers and controls information on nonconformities from hospital health personnel. This counteracts the potential monopoly of information that the private consortium can exercise. For clinical services, the DBFMO hospital is subject to the same control mechanisms as other public hospitals and the system publishes comparative performance information of all hospitals. However, in the Dutch cases, the private consortium is entrusted with controlling its own performance and information. In both cases, problems of interpretation of the results can arise and the procurer employs audits or inspections or random tests to confirm the information offered by a private agent.

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Transparency seems to be facilitated and sometimes even improved in comparison with traditional procurement, but sometimes it seems to be at stake. The findings do not completely endorse the views of Bloomfield (2006) and Papadopoulos (2007) who argue that NPM practices decrease the level of transparency. The procurement process of DBFMOs and the requirement for monitoring will ensure the provision of information about the project. The complexity of the financial underpinning of the project, however, frustrates transparency in the sense that those who should understand the agreements are not always able to do so (see Hood, Fraser and McGarvey 2006). Furthermore, the findings show that information is not always available or accurate (Altshuler and Lubberhoff 2003). However, consortia provide insight into performance and any lack of information or the inaccuracy of information is not structural. Over time, the provision of accurate information can improve. The suggestion that DBFMO encourages the generation of meaningless data (Hood, Fraser and McGarvey 2006), is therefore not supported by the findings of these cases.

With respect to responsiveness, an ambiguous picture appears. Although public servants are no longer in charge of the current operation, their influence continues to be felt through the contract and output specifications, the application of monitoring mechanisms, and the way in which performance can be adjusted. The suggestion that the public sector is no longer in control when it comes to influencing and constructing public policies (Bevir 2010, Flinders 2010, Skelcher 2010) is therefore not supported by the findings of this study. Instead, the influence of the public authorities in a DBFMO seems to have changed, rather than declined. Although not providing services themselves, the procurers act as facilitators and project coordinators which indicate that the public-private network is still 'of the government' (McGuire and Agranoff 2011, 279). However, although public servants can draft the contract and define the output specifications and can adapt both documents during the construction and operational phases, the sometimes costly and time-consuming negotiations prior to the eventual adaptation do not allow the

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procurer to influence the performance of the consortium directly. In the Spanish cases, there are considerable restrictions on the introduction of changes. Moreover, the current influence of public servants depends on the level of input and the exact role of external advisors who, in some Dutch projects, not only advised the procurer but also made important decisions. All projects show that DBFMOs constitute instruments of government depoliticization as it happens in Flanders and in the United Kingdom (Willems and Van Dooren 2016). This is in line with the 'logic of discipline' where government off-loads responsibilities to the private sector in a bid to give up some of its own. (Jessop 2014).

Bovaird (2004) suggests that NPM practices make it less likely that politicians can be responsive to changing circumstances. The results indicate that their influence is indeed hindered when trying to introduce contractual changes and to implement budget cutbacks, as was also suggested by Hodge (2010). The long-term nature of the contract also seems to diminish the amount of political influence on the project.

With respect to responsibility, the suggestion by Debicki (2003) that private parties might fail completely in providing public services is not supported by the findings. Despite the irregularities, the consortia, in general, do perform as they are supposed to. However, the ambiguity of contracts and output specifications leads to discussion and creates the opportunity to pass the blame and dodge responsibility (Hood and McGarvey 2002, Brown, Potoski and Van Slyke 2010). The degree to which contracts guarantee compliance depends greatly on the completeness or quality of the contract. Besides the importance of the quality of the contract and output specifications, compliance also depends on the attitude or willingness of the consortium.

The results indicate general satisfaction with the quality of the infrastructure. The quality of the service is subject to controversy, but there is no indication that this quality is lower or diminished, and this differs from studies that report a reduction in quality (Hartley and Huby 1986, Van Slyke and Hammonds 2003). The quality,

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whether infrastructure or service provision, seems to be at least maintained or even sometimes improved, especially in the hospitals according to statistical studies. This is in line with previous empirical results in the context of contracting and privatization (Andaleeb 2000, Fumagalli, Garrone and Grilli 2007)

The findings support the claim by Domberger and Jensen (1997) that quality seems to be facilitated, or even improved, because of output formulation and the introduction of performance monitoring. However, the safeguarding of quality depends both on the ability of the procurer to translate their expectations into outputs and on the capacity of the monitoring mechanism to identify what must be adjusted in order to match delivery with expectations. As suggested by Peat and Costley (2001), the application of monitoring mechanisms and the operation of the financial mechanisms proved to be problematic in all cases. This can be attributed to a lack of management capacity and deficient knowledge of the specific logic of procurement (De Bettignies and Ross 2009, Van Slyke and Hammonds 2003), although the quality of contract monitoring, indeed, depends on the quality of the public organization or public servants and this can vary from one context to another (Domberger and Jensen 1997). Furthermore, in the case of the detention centre, the non-clinical services of the hospitals, and the Ministry of Finance, the assessment of performance with respect to the operation, was rather subjective, leaving room for different interpretations that might be subject to discussion (Domberger and Jensen 1997). Finally, the highway and water projects demonstrated that quantitative output criteria leave less room for interpretation and trigger less discussion about the quality delivered by the consortium. As regards the clinical services, the existence of management contracts, league tables with hospital performance, and a clear understanding of the performance indicators that measure clinical effectiveness and patient safety reduce the discussions about the concept of quality. Whenever these discussions occur, they also apply to public hospitals. The findings support the premise that for quality to be safeguarded, the procurer's expectations must be

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clearly articulated, and performance should be measurable (Alonso and Andrews 2016, Brown, Potoski and Van Slyke 2006, Deakin and Walsh, 1996).

The results of this study coincide with previous research emphasizing the importance of the completeness of the contract (Brown et al., 2007, 2010) and of public managers who have the ability to properly apply quality management tools (Peat and Costley 2001). In relation to the completeness of the contract, the results show that incomplete or ambiguous specifications of the product or service cause controversy in relation to quality. Although public purchasers may spend more time writing more complete or less ambiguous specifications, it is very unlikely that the contracts will contain complete specifications with no hint of ambiguity (Brown et al., 2010). Therefore, the procurer must be aware of the inherent limitations of these contracts.

For policy implementation, the extent to which the contract is designed (top-down perspective of policy implementation) and the degree of discretion offered to the agents (bottom-up implementation) (Matland 1995) is of relevance. Discretion helps implementers to be able to respond to the political and the institutional context. The Dutch context is more open to discretion and amenable to achieve the policy goals given the ease with which changes in the contracts can be made, for instance. This is not the case in the Spanish context where the legality principle seems to reign over other policy goals (Parrado and Reynaers 2019). As the work from Thomann et al. (2016), our analysis of seven case studies offer instances where there is a clash between the state and the market logics with skirmishes by a private agent to avoid state control. Given the complexity of the financial formula to fund the DBFMO, at times this control seems to be weak. For policymakers, there is a considerable need to enhance the control of private agents. The use of external consultants, the lack of financial expertise and the use of self-reporting mechanisms (Dutch cases) must be considered when trying to safeguard public values. Furthermore, policymakers and public implementers need to be aware that this policy instrument requires careful implementation and constant monitoring since the contract is not self-reinforcing.

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Appendix I Interview guide

GENERAL

1. What is, or has been, your role in this project? In which phases of the project have you been involved?
2. What is your professional baggage?
3. How many years of experience do you have with this type of concessions?

ACCOUNTABILITY

1. Could you tell us who is accountable to whom in this project? (Between the Administration and the concession company, within the company, outside the company).
2. On what issues do you/they have to render accounts?
3. How do you have to explain the project expenses?
4. Have you experienced any problems in the process?
5. Can you explain this and provide some examples?
6. Can you tell us how the financial management of the project works?
7. How do you give accounts of contractual agreements and their adaptations?
8. Have you experienced any problems in the process?
9. Can you explain this and provide some examples?

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10. Can you tell us how contractual agreements and adaptations work?
11. How do you explain the product (or product) specifications and the adaptations?
12. Have you experienced any problems in the process?
13. Can you explain this and provide some examples?
14. Can you tell us how the product specifications and adaptations work?
15. How do you account for the performance in the construction phase and the operational phase?
16. Have you experienced any problems in the process?
17. Can you explain this and provide some examples?
18. Can you tell us how performance information is used?
19. Do you have the impression that you can follow the process? In what sense?

TRANSPARENCY

1. How did you organize the process of formulating financial and technical specifications?
2. To what degree have you cooperated with the consortium/ministry during this process?
3. Have you experienced any problems in the process?
4. Are you satisfied with the quantity and quality of the information that appears in the contract?
5. How is the process of formulating product specifications organized?
6. Have you experienced any problems during this process?
7. To what degree have you cooperated with the concessionaire / the Administration during this process?
8. Are you satisfied with the quantity and quality of the information referring to the results standards?
9. How did you organize the follow-up process in the implementation and operation phase of the project?
10. To what degree have you cooperated with the concessionaire / the Administration during this process?
11. Have you experienced any problems in the process?
12. Are you satisfied with the quantity and quality of the information provided?
13. To what extent were the specifications of the contract and the product useful guidelines?
14. Have you experienced any problems in this regard?

RESPONSIVENESS

1. Who decides the contractual agreements?
2. How was this process organized?
3. Was there enough stakeholder participation according to you?
4. Who decides the product specifications?

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5. How was this process organized?
6. Was there enough participation from key actors according to you?
7. Did the ministry or consortium try to adjust product specifications and contractual agreements during the project?
8. To what extent were you able to do it? If it is difficult, what makes it difficult for them to do it?
9. Who do you think is in charge of this project?

COMPLIANCE WITH THE CONTRACT

1. What is your general impression of the effort made by the consortium?
2. According to you, does the consortium provide what it has to provide?
3. If so, can you provide examples?
4. Why do you think they provide what is supposed?
5. If not, can you provide examples?
6. Why do you think they do not provide what is supposed?
7. Are there disputes between the consortium and the ministry about whether the consortium does what it should do? If so, what are the disputes about?

QUALITY

1. What is your opinion about the quality of the infrastructure?
2. Can you explain this?
3. Can you give examples?
4. Compared to your previous experiences, how do you consider the quality of the infrastructure in this project?
5. What is your opinion about the quality of service provision?
6. Can you explain this?
7. Can you give examples?
8. Compared to your previous experiences, how do you consider the quality of service provision in this project?
9. What are you happy with?
10. With what are you less happy?

Appendix II Codes used to analyze the interviews

Accountability

- Content (Financial / Legal / Technical)
- Performance (Construction / Services)

Transparency

- Before contract closure

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- o Availability of information (Financial / Legal / Technical / Operational)
- o Accessibility of information (Financial / Legal / Technical / Operational)
- o Accuracy of Information (Financial / Legal / Technical / Operational)
- After the contract is closed
- o Availability of information (Financial / Legal / Technical / Operational)
- o Accessibility of information (Financial / Legal / Technical / Operational)
- o Accuracy of Information (Financial / Legal / Technical / Operational)

Responsiveness

- Before contract closure (Determine / Influence / Adapt)
- After contract closure (Determine / Influence / Adapt)

Contract compliance

- Comply
- Non compliance

Quality

- Infrastructure Quality (Satisfied / Not satisfied)
- Quality of Services (Satisfied / Not satisfied)

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