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***Public-private partnerships for
infrastructure at the sub-national level of
government :
Opportunities and challenges in France***

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Public-private partnerships for infrastructure at the sub-national level of government: Opportunities and challenges in France¹

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Introduction

According to the OECD, after a short-lived expansion in reaction to the crisis, public investment has recently experienced a substantial decline in a number of European countries (OECD 2013). As a natural reaction to these budget cuts, more efficient use of increasingly limited resources is put in the limelight: “Doing more with less” has become the mantra of this decade. Those financial constraints have been translated by a changing role of the government itself. Moving from own production to delegation and externalization, the public sector has shifted its focus from dealing with the internal bureaucracy to managing relations with external partners through public-private partnerships. As a result of this transition, which began before the financial crisis, the typical job description of public managers and bureaucrats has significantly changed over the last decades.

This chapter addresses difficulties related to the decision as to go through public-private partnerships. In what follows, we will refer to the definition proposed by the OECD that defines PPPs as 1/ long-term contracts where « private actors assume all or partial responsibility for designing, building, financing, and/or operating infrastructure assets » and for which 2/ « in return for its role in a PPP, the private partner receives a stream of payments from the government, from users (user charges), or both » (Mizell 2015, pages 3-4). While these new forms of providing public services are mainly chosen as a reaction to limited resources and with the aim of accessing private sector expertise to overcome limited public sector capabilities, this shift created a set of new capacity challenges for the public sector: partial contracting out of government services requires specific types of contracting capacity (Brown and Potoski (2003)). In fact, such capacity might be a necessary condition for success and as such need to be carefully studied. We believe that the question of administrative contracting capability as a determinant of performance has not received enough attention. In order to understand and reconcile the large variation in public-private-partnerships (PPP) and contracting out performance with the theoretical predictions, it appears indispensable to put the spotlight on administrative skills. This is one of the objectives of this report. More specifically, through case studies, we put forward several propositions in order to foster opportunities, overcome challenges and create supportive arrangements for PPPs at the sub-national level in France.

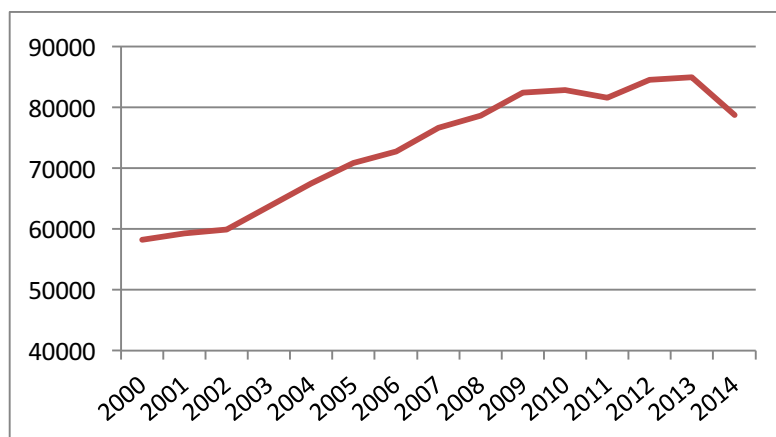
The **first part** of this chapter presents briefly the context for PPPs in France. In a **second part** we explore where the challenges associated with the development of sub national PPPs are by looking at the particular cases of the city of Caen (a medium size city in France) and the city of Paris. As expected, problems encountered by such big cities and medium cities are not the same. We conclude by delineating our main results and by suggesting that the new European public procurement and concession directives might deeply change the rules of the game. These new directives voted in early 2014 that have been translated in national laws (the deadline to translate the Directives was April 2016), instead of pushing for more central or regional regulation, bet on a decentralized regulation based on more transparency (Stephane Saussier et Tirole 2015). If this might be a good way to foster competition it will not help reducing capability shortages identified in this report for some cities to develop PPPs in a near future. We suggest that one potential avenue to develop such capacities is to create a national observatory in charge of collecting data, informing and training local public authorities not only for PPPs but more broadly for public-private complex infrastructure contracts.

1. Country context for subnational PPPs

Infrastructure needs in Europe and in France

Total public investment is a sizeable sum in France, with nearly EUR 80 billion invested in 2014 (see Figure 1).

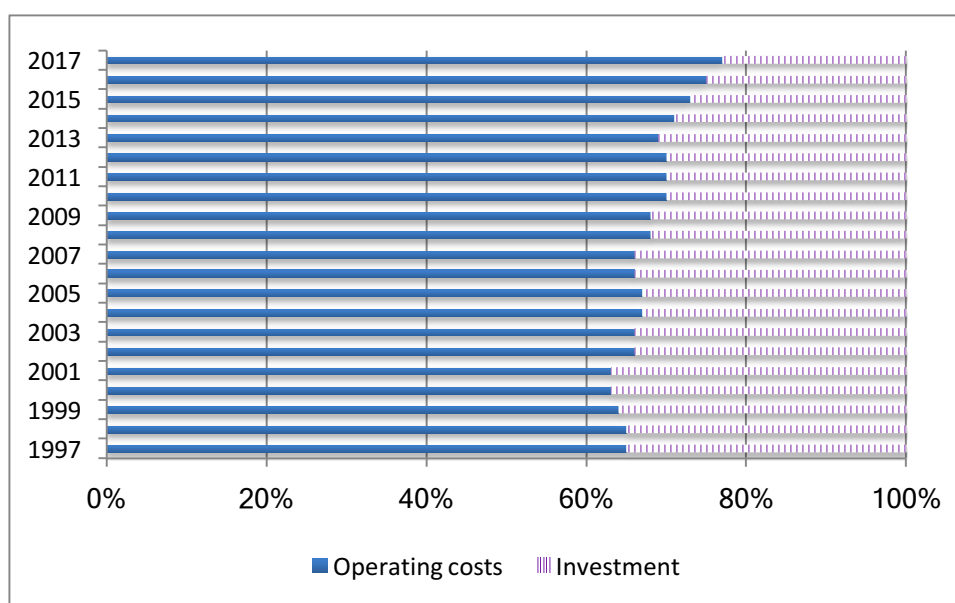
Figure 1. Gross Capital Formation of Public Administrations (France - Million €)



Source: Figure made by the author – INSEE 2015

Local public administration invested more than EUR 50 billion in infrastructure in 2014, accounting for more than 60% of total public investment. This illustrates that a substantial portion of public investments is made at the local level. However, if local authorities play an important role in public investments, their budget is also expected to decrease, leading to a decline in the infrastructure investment in the coming years (See Figure 2).

Figure 2. Repartition of local authority's expenses



Source: Conseil économique, social et environnemental – July 2015 (Conseil Economique Social et Environnemental 2015)

In a period where investments in infrastructure are needed, in transport infrastructures as well as in many other public services, to attract investments, generate growth, meet environmental targets and increase well-being in France and more broadly in Europe, those two figures highlight the need to think carefully about the efficiency of local public investments and potential ways to foster it.

Tools for investing in public infrastructures

There are mainly three tools available for local public authorities in order to invest in public infrastructures: Traditional public procurement; concession and availability-based contracts. According to the definition of PPPs we retained for this chapter (See the introduction), only concession contracts and availability based contracts are part of PPPs.

Public procurement

Traditional public procurement is still in France, and all over the world, the main way to invest in infrastructures. In France, according to the French Economic Observatory of Public Procurement of the French Ministry of Finance (OEAP), procurement contracts accounted for around EUR 72 billion before tax in France in 2013 (for some 96,500 contracts). The OEAP data, however, only account for contracts above the threshold of EUR 90,000 and it is noteworthy that it has no tool to control or penalize in the event of failure to submit the required declaration. With this in mind, public procurement contracts are believed to amount to about EUR 200 billion a year in France, or 10% of the GDP of which around 35% are dedicated to infrastructures.

Concession contracts

Concession contracts, a second tool for investing in infrastructure, have a long history in France dating back to the XVIIth century. Through concession contracts, a public legal entity entrusts investment needs and the management of a public service for which it is responsible to a public or private entity in return for a payment that depends on the results of the service operation. End-users are usually (at the exception of shadow tolls) those who pay the concessionaire.

In France, such contracts are very usual. They are employed for mass catering, water and sanitation, district heating, transport, sports facilities, etc. Unfortunately, there is no concessions observatory in France (like it is the case for public procurement contracts with OEAP) to inventory on-going concession projects. It is often estimated that concessions in France account for a volume of business amounting to over EUR 100 billion a year for operators alone (IGD 2011), or around 5% of the GDP (around half of which is generated by transport initiatives).

Availability based contracts

Finally launched in June 2004, “public private partnership contracts” – very similar to private finance initiative (PFI) contracts in the UK– enables a public entity to entrust a company with a global project as part of a long-term contract and in return for a staggered payment from the public entity conditioned to key performance indicators (availability-based payment contract). It is used for major construction projects (educational establishments, train stations, etc.), urban infrastructures (street lighting, roads, etc.) and even sport and cultural facilities (theatres, stadiums, swimming pools, etc.).

The introduction of this new kind of public private partnership was primarily designed to help France to catch-up to other countries such as the United Kingdom which has used this type of tool since the early 1990s. While there have been an increasing number of availability based contracts signed between

2005 and 2012, the total amount involved with such contracts lags well behind the other two public procurement tools (around 0.2% of the GDP). About 14 EUR billion of investments in infrastructure have been financed through availability-based contracts in France between 2004 and 2015, that is to say less than ... 3% of public investments in infrastructure made over this period. The majority of contracts have been signed at the local level (city or urban areas levels). Contracts signed at the local level are of lower amounts (the average amount at local level is EUR 28 million compared to an average of EUR 220 million for contracts signed at the State level)². According to Fin Infra, the French PPP Task Force, of the EUR 3.5 billion spent at the local level over the 2004-2015 period:

- 41% was allocated to sport and leisure infrastructure (mainly stadiums);
- 23% to education infrastructure (mainly schools)
- 13% to lighting, car parks, and waste management;
- 11% to transportation;
- 7% to information technology; and
- 5% the renovation of buildings to achieve better energy performance.

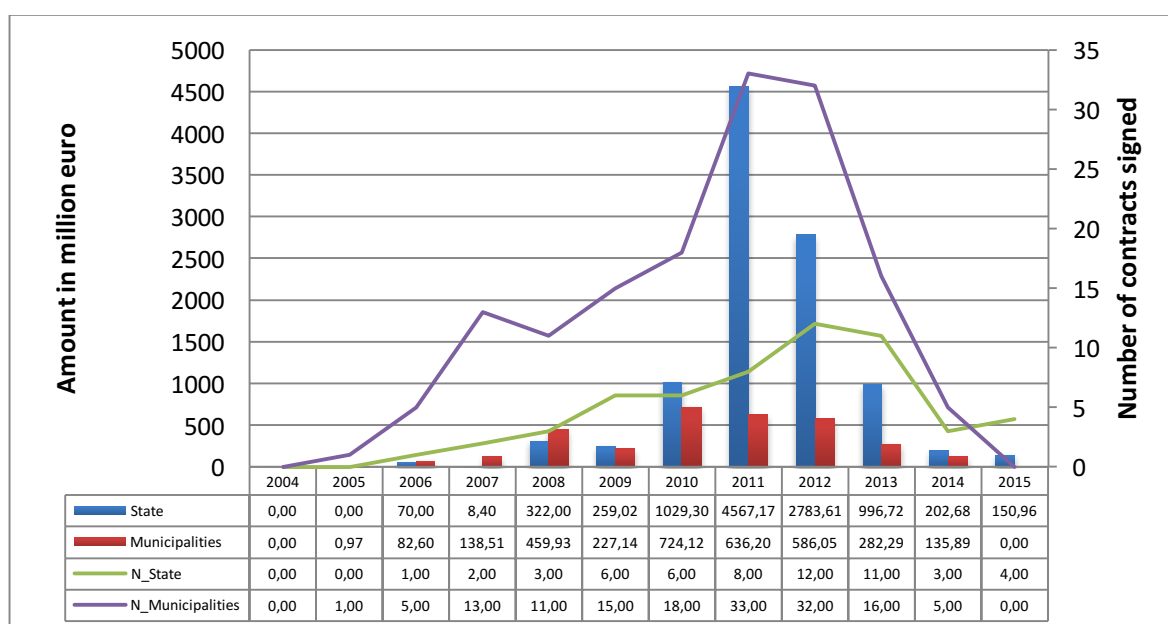
(See Box 1.)

Box 1. Availability-based contracts in France

About 14 EUR billion investments in infrastructure have been financed through availability-based contracts in France between 2004 and 2015, that is to say less than ... 3% of public investments in infrastructures made over this period. The majority of contracts have been signed at the local level (city or urban areas levels). Contracts signed at the local level are of lower amounts (the average amount at local level is EUR 28 million compared to an average of EUR 220 million for contracts signed at the State level).

² Calculation made by the author using data from Fin Infra, the French PPP task force. Data concerning availability based PPPs are regularly updated and available on line here: www.economie.gouv.fr/ppp

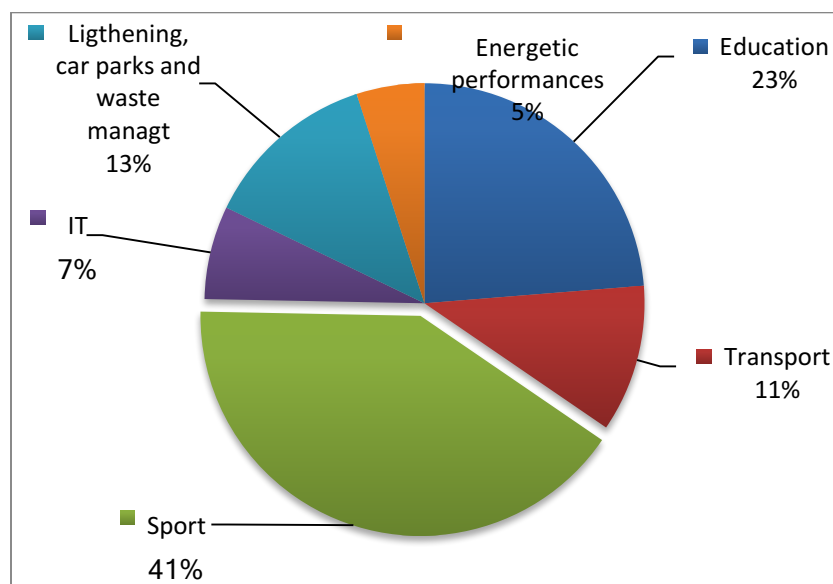
Figure 3. Amount if investments in infrastructures - French availability-based contracts between 2004 and 2015 (October)



Source: Fin Infra – data updated October 8th, 2015

Over the EUR 3.5 billion spent at the local level, 41% were allocated to the funding of sport and leisure infrastructures (mainly stadium) and 23% in education infrastructures (mainly schools). Only a small part went to the renovation of building in order to achieve better energetic performances (5%).

Figure 4. Type of infrastructures financed at the local level (by level of investments)



Source: Fin Infra – data updated October 8th, 2015

The fact that the use of availability based PPPs in France is largely developed, but still small compared to traditional public procurement contracts should not be interpreted as the result of difficulties specific to those PPPs. Traditional public procurement contracts are considered in France as the natural way to provide infrastructures, largely because of the the French law of 1985, known as “the MOP law”,

concerning “public contracting authorities and their relations with private contractors”. In addition, Availability-based PPPs are subject to legal constraints (value for money reports, ...) that do not exist yet for traditional public procurement contracts and that make them more difficult to use for a public authority.

However, distinguishing among the available tools in order to invest in public infrastructures is useful. Firstly, because it highlights that PPPs refer to two different ways to finance infrastructure, namely concession and availability-based contracts. Secondly, because problems associated with PPPs are for some of them common to availability-based and concession contracts. However, availability-based and concession contracts have also problems that are specific and that may explain why one form of PPPs will be preferred toward the other at the sub-national level.

Difficulties encountered in France with PPPs

What does the theory suggest?

The economics of PPPs is now largely developed (Saussier 2015). Williamson (1976) highlights several fundamental problems associated with public-private partnerships: organizing competition for the market is not easy, transaction costs make contracts necessarily incomplete, and switching costs make public authorities who enter contracts vulnerable to *ex post* contractual opportunism.

The local public authorities’ problem is to organize competition for the market in order to select the most efficient partner to provide a service. This is challenging because the selection process, itself, may be complex, requiring the specification of a vector of prices for different types of customers, consuming at different times, and for different levels of quality. Moreover, if operators are selected according to price bids, then public authorities are vulnerable to “winner’s curse”, since the best offer may come from the most “optimistic” operator who unintentionally underestimates production costs or overestimates future revenues – this problem is especially an issue for concession contracts but not for availability-based contracts because revenues for those contracts are not coming from future demand. Alternatively, public authorities may also be victims of aggressive bids when prospective operators strategically underestimate production costs or overestimate future revenues in order to win the deal and then provoke renegotiations with a “captive” local public authority in the future (low balling strategy). Probably more important, public-private partnerships are not immune to collusion and corruption strategies, especially because they usually deal with large amount contracts. This makes such contracts particularly prone to political contestability issues (Spiller 2009) explaining why they usually appear very rigid contracts unable to be adapted to an evolving environment – See for example the difficulties encountered by English schools in order to change menus after Jamie Oliver’s show urging for a better food for children.³ Renegotiation may also occur because conditions of change over the duration of a contract, necessitating an efficient adaptation mechanism for its terms (Estache and Saussier 2014).

The public authority also faces switching costs in changing suppliers that induce it to stick with an inferior operator that was awarded a franchise. If a public authority switches suppliers, it could face political embarrassment and service interruption, reduced incentives for private parties to invest (fearing early contract termination), and would need to organize a new (costly) auction. On the flip side, these switching costs give firms incentive to renegotiate contracts to obtain higher prices, misrepresent costs,

³ The Guardian, April 25th, 2005 -- <http://www.theguardian.com/society/2005/apr/25/schools.politics>

and provide low quality service (to the extent that this behavior is not monitored and/or that quality is not perfectly contractible). The problems that stem from imperfect and asymmetric information are even greater if the incumbent creates knowledge-specific capital that gives him a cost advantage.

Theory thus suggests that public private partnerships are not a free lunch (See the Velib case – Box 5 as a good illustration). They necessitate resources in order to manage the selection process and the contract execution. Such resources are not identical to those needed when public services are organized through direct public management, may lack to local authorities and might be difficult to acquire.

What do we observe?

Public private partnerships are not very popular in France – even if, paradoxically, concessions are widely developed in France since a long time. They are regularly attacked in French newspapers being accused of being too expensive (See for example the advice given by the French Competition Authority concerning French concession contracts for highways – Avis 14-A-13, September 2014 – widely echoed and commented in the press)⁴ and used in order to get around debt constraints.⁵ In addition, some PPPs have been hit by corruption scandals (See for example the Balardgone case, that is an availability-based PPP launched in order to build and manage in Paris buildings that are welcoming civil servants from the Defense department).⁶ This is also the case for some public procurement contracts but PPPs are more targeted by the newspaper articles. PPPs are also considered as a political topic: when looking at the way availability-based contracts evolved in France (Box 1), the political color of the government affect the willingness of public authorities to go through PPPs or not – availability based contracts have been developed mainly during Sarkozy's years. Lastly, some emblematic public authorities, like the city of Paris, campaigned, at least until recently, for a return back in direct public management for water services since the city decided not to renew its concession contracts in 2010 for political motives.⁷

All those elements suggest that PPPs are plagued by difficulties that are not always well handed by the (local) public authorities. In what follows, we draw on interviews and existing data to examine the case of two cities, one medium-sized and one large, to highlight what those difficulties are and what solutions could be implemented to solve them.

⁴ http://www.autoritedelaconurrence.fr/user/standard.php?id_rub=592&id_article=2429&lang=en

⁵ See for example the report from two French Senators -- Les contrats de partenariats: des bombes à retardement? -- Rapport d'information n° 733 (2013-2014) de MM. Jean-Pierre SUEUR et Hugues PORTELLI, July 16th, 2014 -- https://www.senat.fr/rap/r13-733/r13-733_mono.html

⁶ http://www.lemonde.fr/societe/article/2014/05/13/affaire-du-pentagone-francais-deux-hommes-dont-un-militaire-mis-en-examen_4416256_3224.html

⁷ See for example, “Taking stock of remunicipalisation in Paris: A conversation with Anne Le Strat” in Our Public Water Future – The Global Experience with remunicipalisation, 2015.

2. Sub-national PPPs

The case of Caen⁸

The use of PPPs in Caen

Caen is a city in north-western France. It is the prefecture of the Calvados department and the capital of the Normandy region. The city has 108,365 inhabitants (as of 2012 national census), while its urban area has 420,000 inhabitants, making Caen the largest city in Lower Normandy. The urban area of Caen, in turn, is the second largest in Normandy after that of Rouen, the 21st largest in France.

The city has adopted a mixed approach to the organization of its public services. Some services are contracted out; the majority of them are publicly managed by the city. Infrastructure needs for the city are globally met. There is a multi-year strategy plan decided at the city level (an obligation for large French cities). Only very few shortages were mentioned during interviews. This is because the city is mainly responsible for infrastructure investments. With the exception of national and department roads (that are not important for the city of Caen), the city decides unilaterally – and when the investment is decided at the urban area level, the city of Caen is the main actor – where and how to invest. There is neither mismatch nor overlapping problems with other decision levels nor laws or regulations that might interfere at different levels of government. The only interference comes from the fact that some regional investments are State subsidized, influencing investment decisions that are taken at the regional level. Some investments that are not a priority might be favoured as soon as the city or the urban area want to benefit from subsidies (e.g. the Caen Regional Multimedia Library – Box 2).

Box 2. The Caen Regional Multimedia Library: The influence of State and Regional levels

The Caen Regional Multimedia Library, financed through traditional procurement, opened in 2016 in order to replace the existing, outdated library in Caen. The new library has been designed by Rem Koolhaas (the Golden Lion Award in the Venice Architecture Biennale in 2010) and is located in the city center. The project started in 2010 and cost EUR 61 million but the city will only have to pay EUR 40 million because the project is benefiting from EUR 21 million in subsidies from the national and regional levels of government.

Many people have questioned the social value of such an investment and choice that have been made to locate the library in the city center, especially considering recent technological evolutions that are reducing the need for people to be physically at the library to access books, newspapers, etc.

Source: La future BMVR est-elle justifiée ? Gary Dagorn et Élise Delanoë • 21 février 2014 - <http://www.mon-caen.eu/culture/future-bmvr-caen/>

Like the country overall, infrastructure needs are mainly achieved through traditional public procurement, not PPPs. When concession contracts are signed, they are often lease contracts involving few private investments (i.e. the private partner is mainly involved in the operation phase and may invest for maintenance, but not in the construction phase). According to our interviews, the main reasons why the city decided to develop PPPs are to decrease the delivery time for primary infrastructure

⁸ In this section, when statements are not precisely sourced, they come from what we understood from our interviews.

and to increase the efficiency during the operation phase. Those motives are in line with previous studies on French PPP contracts. Saussier and Tran (2012) showed that 77% of availability-based contracts delivered infrastructure on time in France. Conditional payments to the private partner are a strong driver in achieving such a good result. In addition, another reason put forward is that when revenue budgets are under pressure, public authorities can decide to make short-term savings by cutting the cost of on-going maintenance of infrastructure assets. This might lead to increased costs overall as the costs of delayed maintenance can greatly exceed regular, more timely, maintenance. It can also decrease the quality level of the provided services. By contrast, in a PPP, because the private partner is contractually obliged to maintain the infrastructure (and incentivized to do so in concession contracts) the procuring authority is contractually obliged to pay for it and the efficiency during the operation phase is increased.

Table 1. Services contracted out in Caen

Services contracted out	Type of contract	Partner	Private %	Decision Level
Water distribution	Concession (Lease)	Private / Veolia	100	City
Peace Memorial	Concession (Lease)	Public-Private local public company (LPE)	<50	City
Equestrian Center	Concession (Lease)	Private	100	City
Crematorium	Concession (Lease)	Private	100	City
Exhibition Hall	Concession (Lease)	Private	100	City
Heating Network	Concession	Private - Dalkia	100	City
Car Parks	Concession	Private - Vinci	100	City
Zenith – Music Hall	Concession	Public- Private LPE	<50	City
Airport	Concession	Private – Chamber of Commerce and Industry	100	Urban area
SeaPort	Concession	Private	100	City
Waste Management	Concession (Lease)	Private	100	Urban area
Court of Justice	Availability-based	Private	100	State
IT Network	Concession	Private	100	Urban area
Hospital	Availability-based	Private - Bouygues	100	Urban area
Golf	Concession (Lease)	Private	100	Urban area
Vehicle Pound	Concession (Lease)	Private	100	City
Tourism Office	Concession (Lease)	Private	100	City / Urban area

Source: recollection by the authors from interviews made at the city level.

Caen's experience with PPPs has been mixed. An availability-based contract signed by the urban area for the creation of the Caen Hospital Center proved problematic at early stages. Inadequate public

sector capabilities at the outset of the project hampered the implementation of the PPP. The resulting experience partly explains why such contracts have not been used more broadly by the city and highlights how a past experience may have long-lasting effect.

Problems with hospital PPPs are not unique to the urban area of Caen. In its 2014 report, the “Court des Comptes” (Court of auditors – it is a quasi-judicial body of the French government charged with conducting financial and legislative audits of most public institutions and some private institutions), devotes a long chapter to public-private partnerships (PPPs) for hospitals. The Court wrote, "These proceedings were launched precipitously, the benefits that are attributed to PPP were poorly exploited and financial issues have been insufficiently taken into account". The report pointed out that 24 hospitals were conducted in PPP for an investment of EUR 613 million and that there was no real choice made by public authorities to go through PPPs or other procedures. PPPs have been “deployed in haste without the accompanying legal tools and management institutions are sufficiently available”.

Concerning the choice of the PPP, the Court regrets that "no prior study has actually been required, neither on the financial implications of the project, nor in terms of comparison with the public project contracting procedure". The Court believes that "the lack of sufficient preparation for this new procedure, inexperience and the negotiators largely oriented assistance for PPP led to the selection of disparate operations and the signing of contracts holders of financial uncertainty".

Concerning the contractual side, safeguard contractual provisions to ensure the continuity of public service have been incorporated into many contracts with a set of financial penalties applicable in case of unavailability of each function essential to the hospital. But the Court pointed out that "Some are not sufficient," and "contracts reviewed did not sufficiently cover the diversity of conflicts that can arise in a period of 18-30 years (...) A balance must be struck between the stability of the contract that brings financial security and the necessary amendments to the evolution of medical practices. This is one source of the inherent complexity of hospital PPP ". This balance is not easy to find for public authorities that lack contractual capabilities.

Such difficulties encountered in availability-based contracts coming from a lack of contractual capabilities of the local authorities are also encountered in concession contracts as the Caen tram network example illustrates (See Box 3).

Box 3 The Caen guided light transit (Tram): Example of a concession contract that went down

The Caen guided light transit (Tram) project involved 24 three-section articulated vehicles, guided by a central non-supporting rail, to provide service. The entire passenger line is guided, and in normal service, the vehicles are powered by electricity drawn from an overhead wire through a pantograph. After a construction period of three years, the system opened on November 18, 2002 for a total cost of EUR 227 million.

This project was organized through two thirty-year concession contracts: one for the construction part of the project and one for the service part of the project. Many problems appeared during the execution phase of the contract because the two private partners took advantage of their informational advantage compared to the public authority. As soon as unexpected events / performance issues arose, it was impossible to clearly delineate which partner was responsible. With three major breakdowns per day, a rate 32 times higher than the contractual objective, above normal maintenance costs of EUR 1

million per year and penalties of EUR 1.5 million paid by both concessionaires for nine years, it is fair to say that the tram did not display the expected results.

Due to its unreliability, the Caen urban area confirmed its plans to abandon the Caen TVR in favour of light rail by 2018. The light rail is set to take 18 months to construct and has an approximately EUR 170 million price tag. The conversion to light rail also means the termination of two concession contracts that Keolis and Bombardier-Spie Batignolles consortium STVR hold. Faced with possible appeals, Viacités – the transport union of the Caen urban area - will also apply to the administrative court for the appointment of an expert, in order to establish the level of responsibility of the STVR. In late 2014, the French government pledged EUR 23.3 million towards Caen's light rail conversion project, which is now expected to cost approximately EUR 230 million.

Sources: Caen abandonne l'exploitation du tramway sur pneus avant son terme – P. Leguel et P. Ambrosi – Les Echos, 19/12/2011; Tramways & Urban Transit, January 2003. Ian Allan Publishing/Light Rail Transit Association.

What would facilitate the development of PPPs in Caen?

Caen is a big city but not so familiar with PPPs (as many French cities). This city is characterized by a lack of expertise, capabilities and knowledge in order to manage PPPs, from the awards procedure until the end of the contract execution. There are no specialized personnel. Even if some examples of success in PPPs are cited during interviews – This is the case of the Caen memorial center (See Box 4) – those successes are not easy and necessitate a real human investment from the city, in order to negotiate and follow the contract, sometimes renegotiating it in order to improve its efficiency like in the case of the Caen memorial (for which renegotiations were easy to manage because of the involved partner – see table 1).

Box 4 The Caen Memorial center for history and peace: example of a partnership with mitigated results

In 1988, the memorial center for history and peace opened its door in Caen. The infrastructure has been entirely built using public funds but the operating expenses (renewal of exploitation material and equipment) have been borne by a semi-public company (Société d'Economie Mixte, SEM) of which the city of Caen is the majority shareholder.

Because of a decline in the number of visitors, the city decided in 1997 to invest in the memorial extension to allow for a diversification of the themes addressed. However, anticipating that this new investment may generate generous extra-revenue for the SEM, in 2002, the city has renegotiated the contract to compel the SEM to pay a rent to the city for occupying the place, just before the extension was open to the public.

In its 2014 annual report, the “Court des Comptes” criticized particularly the way the city of Caen subsidized the SEM. When looking at the financial report from 1996 to 2001 but except in 1997, the SEM achieved negative operating result each year, and was only positively balanced due to extraordinary results originated from the granted subsidies. There were two main sources of subsidies namely, a compensation for the gratuity of cultural services and discount rate for specific groups of individual (e.g. students, senior), and the renewal of equipment. Two main reproaches were made

regarding the way the discount rates were compensated. First, it was based on the lower range of the expected number of visitors and therefore could leave some rents to the SEM. Second, the difference between the compensated tariff and the full rate tariff was so low that the SEM did not get the proper incentives to spend some efforts for attracting full rate visitors and also was against the principle of reporting the risk of demand to the SEM. Also, the city subsidized spending that should have technically been imputed to the SEM (e.g. national campaign of communication, museum curator).

However, it is important to keep in mind that the memorial of Caen is a cultural institution and is still an example of good management in the sector. Indeed, even though the amount of subsidies was important, it was relatively low compared to similar museums and its level was constantly declining before the extension opening. In addition, the revenue generated by the museum was also relatively high for the cultural sector. It is also noteworthy to point out that renegotiation could be favorable to the public entity, as it was the case when the city of Caen decided to collect a rent for the usage of the installation after the extension of the museum was realized.

Source:

Capabilities directly managed by the city to run public services are substantially different compared to what they should be to manage PPPs. Such capabilities are not easy to develop, especially in a short run period. Public authorities can learn from accumulating experiences over time and through various situations. That is why, what is coming upfront very frequently when discussing about those issues with public authorities, is the need for a national or regional observatory⁹ accumulating data and experience in order to diffuse information about what is working and what is not working well with PPPs. This observatory could also advice cities regarding their decision to opt for PPPs or not, the implementation of the call for bids stage as well as the contractual details. However, our interviews suggest that it should not be considered as a third party involvement in the city's decision to invest because cities are independent and really care about this independency. That is why such third party's involvement could be more easily implemented during the execution stage (that is, theoretically, a really important stage where renegotiations take place and might be very costly) and might be welcomed for complex infrastructures.

Interviews also suggest that a clear, *stable* and positive political view concerning the use of PPPs would be welcomed in France (and more broadly at the European level – discussions concerning the new European Directive on Concessions illustrate huge divergences on those issues between European countries) instead of a see-saw effect characterizing France on those issues (See Box 1. concerning the development of availability-based contracts in France and their recent contraction with the new President elected). A stable institutional environment is clearly a need for sub-national PPPs, not only for medium-sized cities but also for big ones like Paris.

⁹ The number of French regions shrink from 22 to 13 regions in France since January 2016. This may justify the creation of regional observatories that would benefit from scale economies and would be easier to create and manage with fewer regions.

The City of Paris ¹⁰

The use of PPPs in Paris

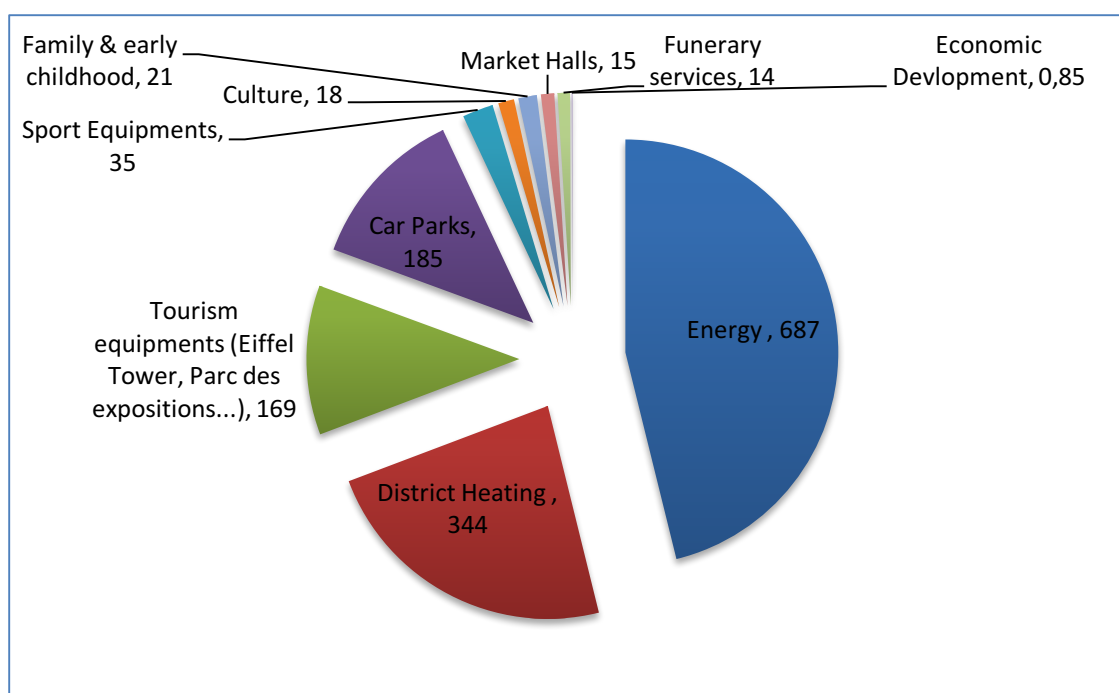
The case of Paris city is interesting because, unlike Caen, the city is familiar with PPP contracts and has a dedicated staff unit for such PPPs. The city is most familiar with concession contracts. 182 are ongoing at the city level. In 2013, they represented a turnover of EUR 1.5 billion. Some of those contracts are signed with local public enterprises (LPEs). LPEs are mainly present for car parks, funerary services, district heating, cold energy, Eiffel tower management as well as the management of the POPB (Paris-Bercy Stadium). Concessions managed by LPEs represent a global turnover of EUR 572 million (1/3 of concessions total turnover). Figure 5 shows the repartition of activities for which concessions were used in Paris.

The City of Paris' experience with availability based contracts is considerably more limited: only one has been signed by the city. This single contract is part of the city's Climate Plan adopted in 2007. The City of Paris is committed to reduce its energy consumption and emissions of greenhouse effect on its public buildings by 30% before 2020. This commitment involves among other the refurbishing of 600 schools in Paris. A first group of 100 schools was first selected for renovation through an availability-based contract. With nearly EUR 50 million investments, it is one of the largest energy renovation programs initiated in France. It started in 2011. In 2014, the performance goals are achieved for 45 of the 100 schools (subject of the first batch of work performed) with a 33% reduction of energy consumption and 34% of greenhouse gas emissions. The results exceeded expected objectives.¹¹ However, the City decided to continue the refurbishment of the 500 other schools using traditional procurement contracts instead of availability-based PPPs. This is because 1/ of a new French legislation opening the path for global public procurement contract linking investments and service provision in a single contract (which was not allowed before 2011) and 2/ the legislative complexity of using availability based contracts. The only difference between both kind of contractual agreements is mainly coming from the fact that the payment is delayed in an availability-based contract and not allowed in a (global) public procurement contract.

¹⁰ In this section, when statements are not precisely sourced, they come from what we understood from our interviews.

¹¹ See La rénovation énergétique des 500 écoles parisiennes ne se fera pas en PPP – Oct. 31st, 2014 – LeMoniteur.fr -- <http://www.lemoniteur.fr/article/la-renovation-energetique-des-500-ecoles-parisiennes-ne-se-fera-pas-en-ppp-26241333>

Figure 5. Concessions turnover in Paris City (Million euro, 2013)



Source: Figure done by the author –Paris City document 2015-DFA-79

Infrastructure needs and main reasons to use PPPs in Paris

The case of Paris city is interesting because, contrary to the case of Caen, the city is familiar with concession contracts and has a dedicated staff unit for such PPPs. However, even with such an experience, the city is going back and forth in some activities (e.g. water) and is experiencing difficulties whatever the kind of operator, private or semi-public (See Boxes 5, 6 and 7). This shows that concessions with private partners as well as with semi-public concessionaires have their problems. Some are common (e.g. the difficulty for the City to control the concessionaire and received data). Others seem more specific to semi-public concessionaires such as the low level of efforts in order to adapt to the demand as well as financial difficulties.

Box 5. The Velib case

The Velib case is a nice illustration of the pitfalls associated with public-private contracting highlighted by contract theories (Williamson 1976, Hart, Shleifer, et Vishny 1997, Laffont et Tirole 1993). In 2006, the City of Paris decided to provide a bicycle-sharing program to its citizens – The Velib. In exchange of the City billboards, private companies bid in order to provide the bicycle service. The call for bids has been difficult to organize. In a first round of bids, Clear Channel won, offering 14 000 bikes instead of 7 500 bikes for its competitor JC Decaux. However, after a judicial appeal, the City was obliged to reorganize a call for bids. This second round was this time won by JC Decaux, with an offer of 20 600 bikes. A huge change in a few weeks! More than EUR 80 million investment over the ten-years contract were planned.

During the execution stage of the contract, it became clear very soon that the contract was unadapted and renegotiations occurred. Penalties for late deployment of the bikes were not applied, as it is often

the case for public private contracts (Saussier 2015). Performance indicators were badly chosen: for example, the private company had the obligation to monitor the bikes network in order for a user to find at least one bike in each station. One way to reach this performance level was for JC Decaux, to let a broken bike in each station! (See CRC report 2012). On top of this, JC Decaux had no financial incentives to provide a service of good quality because the users' fees were going back to the City. Finally, vandalism was underestimated in the initial contract (61% of the bike fleet has been deteriorated during the first year of operation) leading the City to accept to renegotiate in 2007 and 2009, paying 400€ per stolen bike over a threshold since 2009. An interesting detail illustrating asymmetric information issues is that the City found out, two years after accepting to renegotiate that more than 70% of stolen bikes were indeed found out by the private company and put back in the system, leading the City to pay several times for the same bike!

Renegotiations that occurred also changed the nature of the initial contract by providing incentives to JC Decaux to increase the number of users of the Velib. After 2009, the company kept 35% of the net turnover as soon as it was more than EUR 14 million and 50% as soon as it reaches more than 17,5 million euros. The initial public procurement contract moved toward a concession contract where the private company is paid directly by the users.

Interestingly, the Velib contract ended in 2017 and the City re-opened a call for tenders. But this time the City opted for a concession contract instead of a public procurement contract. Was it because the City was very disappointed by the relationship with JC Decaux (Inspection Générale Ville de Paris 2016)? The fact remains that the proposition from Smoove (a small company with a yearly turnover of EUR 9 million compared to the yearly turnover of 3.4 billion euros of JC Decaux) was retained.

Sources: Rapport de la chambre régionale des comptes (CRC) d'Ile-de-France – juin 2012; Inspection Générale Ville de Paris, Audit du contrat Velib, 2016; Les Echos, 12 avril 2017.

Box 6 Difficulties with car parks concession in Paris

Private operator

In 2010, the city of Paris conducted an audit of car parks allocated through concession contracts to the private operator Vinci Park. The main concessionaire in Paris with more than 90 parks under its responsibility for a total turnover of EUR 117 million per year (out of the EUR 175 million generated for all car parks organized through concessions in Paris). The report concludes that there exists a lack of coordination between the city and Vinci Park; that there is an asymmetric information to the advantage of Vinci; and that concession contracts appear to be too rigid for the City to adapt to its strategy (i.e. the environmental strategy of the city would be strengthened by an increase of car park services but such increase would favour too much Vinci Park as they were not anticipated in the long-term contracts). The main conclusion of the report is that the City, in order to recover its control over the public service, should revert to direct public management by not renewing the concession contracts when they expire.

The report stated, “The Audit recommends more exchanges between the City and the private operator to allow the City to ensure a better control of its parks and greater mastery of the pricing policy. The audit has indeed led to identify the existence in some parks entrusted to Vinci Park specific price schemes that deserved to be brought to the attention of the City”. This exemplifies the fact that concessions are incomplete contracts and that the private operator might decide of some prices (toward specific clients) not envisioned by the City.

The report also stated the need to renegotiate “oldest car parks concession contracts in the inner city. Higher hourly rates can only take place at the initiative of the public authorities. They would represent, in the current situation, a financial advantage for the private operator that is difficult to justify. The new pricing policy implies the renegotiation of the financial terms of concession contracts of the oldest parks in the inner city”. This exemplifies the fact that concession contracts are incomplete but also too rigid as they impede Paris City to make car park prices evolve as the city wishes without costly renegotiations with the private operator.

Semi-private company

In 2013, the city of Paris audited car parks allocated through concession contracts to a local semi-public enterprise: the SAEMES. The SAEMES is in charge of 41 car parks in Paris corresponding to 21% of parking places in Paris. The report states that the profitability of the SAEMES is burdened by significant investments that are generating little revenues. 18 of 41 parks are structurally in loss, among which six have a negative gross operating profit. This contrasts with car parks operated by Vinci Park (above) for which nine of 66 contracts appear structurally in loss including five contracts generating a negative gross operating profit. The report also states that SAEMES lacks the necessary tools to anticipate risks and to measure the impact of new management and financial decisions.

The report notes that the City would like to control the SAEMES’ investment renewal program, in particular to know the number of failures recorded in the SAEMES’ car parks and their impact in terms of discomfort or unavailability. However SAEMES considers direct consultation of its Computerized Maintenance Management Software by the City as incompatible with the principle of concession and refuses to let the City access to it.

The report also found that in some parks, the system that displays information did not work and that in general the company had little recent technology equipment (plasma information screen, etc.). More broadly, few efforts were made to develop the brand name of the SAEMES and to respond to customers’ complaints.

Finally, since 2003 all maintenance projects had run behind the schedule set in the initial agreements. Neither the time nor the costs estimated during the bidding phase have been met. While the slippage of costs is only detrimental to SAEMES and its shareholders – at least on the short run. On the long run renegotiations may occur passing costs to users’ fees - missing deadlines also penalizes the users.

Sources: Audit des DSP des parcs de stationnement confiées à la société Vinci – Inspection Générale de la Ville de Paris, 2010 (<http://www.paris.fr/municipalite/l-hotel-de-ville/evaluation-inspection-generale-183#audit-des-dsp-des-parcs-de-stationnement-confiees-a-la-societe-vinci>) ; Audit du train de vie de la SAEMES – Inspection Générale de la Ville de Paris, 2013 (<http://www.paris.fr/municipalite/l-hotel-de-ville/evaluation-inspection-generale-183#audit-du-train-de-vie-de-la-saemes>)

Interestingly, even if the city of Paris has experience with respect to concessions, some failures still occur - as illustrated by the case of Ternes car park (Box 7).

Box 7. One PPP’s failure in Paris: the case of Ternes car park

In February 2002, the City decided to renew its concession contract concerning the “Ternes” car park. The winner, Omniparc, a society belonging to Eiffage, one of the major player in the field (with VINCI), won the 12-year-long contract. The contract mentioned the need to renovate and to extend the capacity of the car park (280 parking spaces in addition of the 1 336 existing ones) with a cost of more than EUR 13 million (EUR 8 million for the extension) for the new concessionaire.

Works were supposed to start within 18 months after the signature of the contract. The concessionaire started indeed to renovate the park and argued that it cost EUR 8 million instead of the EUR 5 million initially anticipated. The concessionaire refused to invest more in order to extend the capacity of the park contrary to what has been contractually agreed. The company asked for a renegotiation of the initial contract arguing that cost have been under evaluated and need to be increase to EUR15 million instead of the EUR 8 million initially anticipated. Reasons invoked were that new security legislation showed up and induced the need to amortize investment on a shorter period than what was expected. The City refused to renegotiate and to pay more than what was initially agreed.

In October 2008, the City ordered the concessionaire to start the contractually agreed project¹² but the concessionaire did not obey. The City decided to terminate, in 2009, the contractual agreement without any compensation for the concessionaire. The concessionaire decided to sue the City asking for the cancellation of the termination arguing notably that investments have been under evaluated and that the City should not have accepted to sign a contract with such an unreasonably low offer. On her side, the City asked for EUR 12 million as indemnities for suffered damages due to a bad quality services over the period the concessionaire operated the service. The administrative court concluded in favor of the City in June 2011 but only condemned the concessionaire to pay EUR 27 000 as damages to the City. The car park is now operated through a concession contract with another concessionaire (Autocité – Spie batignolles)

Several points are worth noting in this Ternes car park case. First, it illustrates the now well-known low-balling strategy consisting for concessionaires to bid very aggressively anticipating that they will succeed in renegotiating *ex post* at their advantage the initial contract. Second, such conflicts are usually rare as the public authorities often accept to renegotiate or the concessionaire accept not to renegotiate in order to preserve its reputation (sometimes by reducing their costs and decreasing quality). This is not the case here, probably because Omniparc has been bought by the society Q-Park in 2008. This company was not at the origin of the offer and this might explain their reluctance to invest so much money in the park. Another explanation is also that the city of Paris is more experienced than other public authorities and can be credible when saying there will be no renegotiation (however the Velib case contradicts this view – See box 5).

However, as it is the case for the city of Caen, it appears that PPPs are not a free lunch. They necessitate that the city invests and develop capability in order to manage every steps of the agreement, going from the award procedure to the execution stage. Such difficulties as well as the fact that those PPPs are

¹² One characteristic of French public-private contracts (whatever the kind of contracts – traditional procurement, availability-based or concession contracts) is that they are considered as administrative contracts. One consequence is that the public authority can change unilaterally contractual provisions and can give orders to the private operators. The private party as no other choice than to accept the order. This right comes with the obligation for the public party to give a fair compensation to the private one. In case of disagreement, the private party can go in front of the (administrative) court. Waiting for a decision, the private party must obey to public orders.

susceptible to be challenged by political opponents may explain the constant willingness of the city to question the interest of PPPs, going back and forth sometimes – for water services for example. This implies the need to involve all the stakeholders at every step of the PPP process to avoid as much as possible third party opportunism (Spiller 2009) taking the form of political challenges that destabilize PPPs. The new governance for PPPs that has been put in place in Paris by the end of 2014 can be understood as an organizational innovation in order to cope with those issues (See Box 8.).

Box 8. A new governance for Public-Private Partnerships in Paris

In September 2014 the city of Paris has set up new governance bodies for concessions with high stakes: the Board of concessions and the Commission of elected people.

The Board of concessions is a concession steering body responsible for defining the strategic objectives, upstream of award procedures but also at the renewal stage of emblematic or strategic City's concessions. Its remit covers the concessions at large. It includes public procurement contracts with forgone revenues (e.g. Vélib' or Paris' kiosks – *see the note below) and availability-based contracts. Its composition has a variable geometry but it comprises all stakeholders and decision makers concerned with the agenda: alongside the Secretary General of the Directorate of Finance and Procurement and Legal Affairs Department, the contract managers directions, sometimes some elected officials are invited to participate. The board thus constitutes a prior arbitration body and defines a strategy with a must at key stages of the contracts' procedure.

The Commission of elected people consists of 9 elected permanent members. Members are carefully chosen notably in order to represent the elected representatives of the political opposition. The Commission meets to set up some guidelines in the case of procurement procedures or particular strategic or symbolic contract renewals. Meetings in this Commission anticipate the ones of the Paris Council since the Commission considers well before awarding contracts, the project, the proposed management methods, terms of competition and the award criteria.

It is expected that these two bodies will address those strategic issues for contracts that are not necessarily with significant stakes in financial terms. The final objectives by creating these bodies are essentially to :

- Increase transparency in the management of public services
- Modernize and secure the award procedures and implementation of public-private partnerships around a "standard City", with the aim of drafting a guide for the main financial provisions being found in all concession contracts;
- Involve elected upstream of the decision and contract renewals.

The set-up of this new governance illustrates (political) difficulties encountered by the city concerning the development of PPPs. However, since this new governance has been launched, few communications have been made by the City to the public concerning its decisions and its efficiency.

*Note: Public procurement contracts with forgone revenues are contractual arrangements that are similar to concessions. For example, the Velib' is a traditional procurement contract signed between the City and JD Decaux (See box 5). In exchange of investing and operating the service, JC Decaux received the right to operate for free the City's billboards, for which the city foregoes revenues.

Discussion

Coming back to theory

PPPs are long-term (incomplete) contractual agreements. As such, they are plagued by transaction costs. Those costs are depending on several elements:

- Contractual choices: cities need to develop contractual capabilities in order to design properly their contracts, knowing that they face private companies that are used to contract and that the devil is often in the detail (Brown et Potoski 2003)
- Governance choices: cities need to think carefully about the kind of PPPs that is appropriate for their infrastructure and service needs. Availability-based and concession contracts are sometimes alternative solutions but should be evaluated before signature and confronted as well with the traditional procurement solution (this last point is often forgotten).
- Institutional framework: cities need to make their choices in a secured and stable environment. Even better, this environment can provide help for them to develop or have access to relevant capabilities in order to sign successful PPPs.

PPPs are costly partnerships with a political dimension

The two cases and examples presented offer several lessons. The first lesson is that PPPs are costly partnerships. PPPs are coming with promises. However, cities must be aware that those promises do not come without any cost. Because PPPs are long term contracts, they are also characterized by transaction costs (Williamson 1985) that the city should try to minimize. This is not an easy process. Asymmetric information exists between public and private parties, often at the advantage of private ones. In addition, and reinforcing this position of weakness, public authorities are usually lacking of contractual capabilities because they differ from those needed to run public services through traditional procurement. Such difficulties are not insurmountable. As illustrated by the case of Aquanova (Box 9.), even a small city can develop a new infrastructure through PPPs at the cost of investing a lot in the contractual process and details.

Box 9. Aquanova – Difficulties in the implementation of an availability-based contract in a small city

Aquanova is an aquatic center financed through a availability-based contract at Saint-Dié-des-Vosges, a small city of 21,000 inhabitants. This project illustrates that even a small city can use PPPs but it has to be supported by a strong political will and significant administrative investment. The EUR 18.5 million project (EUR 12 million investments) started in June 2012 and was completed in early January 2014. At the beginning, the city considered using a concession contract to finance the project, but after a year of discussions, it opted for a availability-based contract. The result was an aquatic center offering multiple of new services compared to the previous swimming pool but for the same price. It gathers multiple services (e.g. swimming pool, diving pool, massages, fitness center) with sustainable development objectives in a region where households' revenues are low. 82% of the revenues generated by this project are subject to added value taxes, generating substantial revenues for the city. The project has thus far been considered a success.

Even when the city developed such capabilities, because PPPs are complex contracts, they come at a cost, opening rooms for criticisms. Those objections usually forget that alternative arrangements (i.e. traditional procurement) are not immune to other limits – not studied in this chapter – potentially even more costly for the cities. Nevertheless, they might destabilize the willingness of the city to develop PPPs.

In addition, PPPs are characterized by the importance of the institutional environment. PPP's legislation is not considered as secured by parties: availability-based contracts have been launched in June 2004 and as such constitute an organizational innovation. Since then, a new law has modified the legislation around those PPPs in July 2008 and the legislation evolved again with the translation in national law of the public procurement European Directive 2014/24/UE.¹³ All those evolutions do not provide a stable institutional environment for contracting parties.

Lastly, PPPs are public-private agreements, characterized by the importance of the political dimension. As pointed out by Spiller (2009) *“A fundamental difference between private and public contracts is that public contracts are in the public sphere, and thus, although politics is normally not necessary to understand private contracting, it becomes fundamental to understanding public contracting”*. Hence, a large part of the control is done by third parties (e.g. stakeholders, consumer associations, political contesters) that are not necessarily interested in the success of the agreement and that might look for destabilizing it (Beuve, Moszoro, et Saussier 2015) and the political agenda is an issue that might destabilize PPPs, especially around election times (Le Squeren 2016).

The need for public contracting capacity

One of the main avenues for developing PPPs is to provide cities with knowledge needed to cope with PPPs' challenges. Because PPPs are considered for many cities as an “organizational innovation”, many of them are reluctant to develop them, waiting for others to start.

One way to provide cities with needed knowledge and capability would be to put in place a national observatory in charge of collecting data on PPPs signed all over the country as well as traditional public procurement contracts. This observatory could advice cities in their choices of organizational arrangement for their infrastructures and could also be in charge of following PPPs' performances once they are signed. In addition to strengthening capabilities, such an observatory could increase the level of transparency around PPPs and consequently the accountability of public decision makers. In their note to the French government (Stephane Saussier et Tirole 2015) emphasized that a greater monitoring of public expenses is needed. They suggest that it could take the form, for high amount contracts whatever their form (i.e. traditional public procurement, concession or availability-based contracts), of a prior evaluation systematically performed, including the full cost and anticipated advantages for each project. These prior evaluations would make it possible to identify the most appropriate form of contract to meet the public need. They also suggest that such observatory could also collect information about the contract execution stage, especially renegotiations. This point seems particularly important with the

¹³ Concession contracts are also touched by the translation in national law of the concession European Directive 2014/23/UE, but more lightly (See (Stephane Saussier et Tirole 2015)).

translation of European Directives early 2016, allowing large renegotiations without being clear about how to monitor them. In addition to the relevant players being held accountable, such information would make it possible to compare the conditions under which contracts are executed, along with the conclusions drawn from studies performed at the pre-contractual stage and that have resulted in one method of procurement being chosen over another. Such evaluations should be carried out by a national observatory, which would also facilitate the centralization of data and results and the possibility of comparing the best contractual practices.

Such a collection of data and information concerning PPPs and traditional public procurement contracts signed in France would also permit to have an objective picture of PPPs performances, helping to reduce political contestability and to stabilize the institutional framework. Ideally, it should be extended to complex traditional public procurement contracts. The need for such an observatory is suggested by the European Directives on public procurement and concession contracts.

Interestingly, such an observatory does exist in France. A PPP task force, The Mission d'appui aux PPP (MAPPP), had been created in 2004 but had been limited to availability-based contracts. This task force was not able to collect precise information and to follow PPPs due to a lack of funding. Furthermore, few was done to follow PPPs' performances once they were signed. But, since April 2016, this task force has been replaced by another, Fin Infra – The Mission d'appui au Financement des Infrastructures – with more responsibilities, notably expanding its mission to every kind of complex public private contracts. The objective is to standardize market practices by spreading the knowledge of adequate allocation of risks for bankable projects among public clients.

For such an observatory to succeed, a considerable budget will be needed for these objectives to be fulfilled.

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