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On the fast track? Using standard contracts in public–private partnerships for sports facilities: A case study

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ABSTRACT

Public–private partnerships (PPPs) for the provision of public infrastructure involve costly contracting processes. Standard contracts are modularly structured documents, which provide standard terms for these processes; it is argued that they help reduce transaction costs by limiting the room for contractual negotiations. We investigate the use of standard contracts in an embedded case study of a PPP policy program in the Belgian sports sector, and apply notions of standardization theory and transaction cost economics to explain the differences in the success of using these contracts. On the basis of desk research and interviews, our study demonstrates both successful and unsuccessful usage of standard contracts across a range of subcases, which include artificial pitches, sports halls, and multifunctional sports centers. Unsuccessful cases were characterized by an interference of local governments' interests that was poorly managed by the leading public actor, and a persistently rigid attitude at the negotiation table of this latter actor. We further relate the different degrees of success to inappropriate government responses to the assets at hand. Finally, we proclaim a more cautious approach toward the standardization of contracts, both in theory and practice.

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1. Introduction

Over the past few decades governments have increasingly embarked on public–private partnerships (PPPs) for the provision of public infrastructure (Yescombe, 2007). A PPP is a specific approach to the construction and maintenance of infrastructure in which the private sector finances a project and bears a large amount of risk. The rationale is that private companies with their own money at stake have a better track record of managing projects. They are incentivized by a desire to recoup their investments to identify and manage project risks and deliver an infrastructure asset on time and on budget (Grimsey & Lewis, 2004).

PPPs involve large sunk investments with long-term timeframes and require new management capacities from governments (Joaquin & Greitens, 2012). It usually takes considerable time and effort to arrive at contractual agreements between public and private actors, which is reflected in high transaction costs. This article focuses on contracting toward PPP deals: the drafting, negotiating, and signing of long-term infrastructure agreements by public authorities and private sector

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partners—i.e. the *contracting process*. There is also a practice of contracting after contracts are signed, *contract management*, but we focus on the process toward the signing of a contractual agreement (Schepker, Oh, Martynov, & Poppo, 2014). We delve into depth about one of the measures governments are increasingly taking in order to ease and shorten the contracting process: the standardization of contracts.

We define standard contracts as modularly structured documents providing standard terms for common elements of PPP deals. They are used to facilitate the procurement process. Standard contracts have been promoted globally and are emerging in various places and sectors. The United Kingdom has been among the first countries in which guidance on project agreements was issued through standard contracts (HM Treasury, 2007), and many other countries have followed. However, while the practical use of standards has been promoted recently, there is a remarkable lack of theoretical and empirical analysis on its benefits and drawbacks. On top of this literature gap is an even more compelling one. Despite the increasing application of public–private investments in sports facilities, the nexus of PPP, contracting, and sports infrastructure has only been marginally examined. Scholarly work on the development of sports facilities has often dealt with investments related to mega sports events and sports leagues (Cabral & Silva, 2013; Long, 2013). Smaller developments, such as day-to-day sports facilities like sports halls and pitches, have received much less academic attention. Furthermore, while many studies have dealt with the aftermath of infrastructure investments, only a few have focused on the governance arrangements (including contracts) of programs and projects aimed at the delivery of sports facilities. The contributions of Hoye and Nicholson (2010) and Prophet and Hatch (2015) belong to the select set of studies that form an exception. Finally, PPP in the sports sector deserves specific attention because it is not nearly the same as PPP in other (engineering or social) infrastructure sectors. The public–private development of day-to-day sports facilities involves significantly less money compared to more conventional PPPs (e.g. roads, tunnels, and public transit systems). The sports sector is much less interesting for private financiers to step in, because smaller deals involve relatively higher costs and lower returns. This makes it all the more interesting to look into PPP programs that actually do involve the development of relatively small-scale sports facilities; they may be able to tell us a lot about the PPP potential of this particular niche.

The objective of this article is to examine the practice of standardizing contracts in PPP in the sports sector. We explain why and how standard contracts are created, and bearing in mind the objective of governments to facilitate the contracting process, we discuss the importance of a match between (a) how standard contracts are used during the procurement process and (b) the characteristics of the projects that are being procured. We use an analytical framework that is grounded in contracting theory, transaction cost economics, and strands of standardization theory to conduct an embedded case study in Flanders, which is the northern part of Belgium (also known as the Flemish Region).

In the federal state of Belgium, Flanders is part of the Flemish Community. Its competences have been legally absorbed by the Flemish Community, and together they form a single body, with its own parliament and government. Belgium has two other communities: the French Community and the German-speaking community. Sports policy is a competence of the communities, which in turn partly transfer this competence to local governments. The Flemish Region has well over 20,000 sports facilities. This number includes outdoor pitches and courts, indoor sports halls, swimming pools, riding schools, and several other types of facilities (Blos, 2014).¹ What has been troubling the region for many years is a consistent lack of sports facilities. While the provinces of Limburg and West Flanders have an oversupply of sports facilities, the densely populated provinces of Antwerp, East Flanders, and Brabant have been dealing with significant gaps. This problem was also announced in a 2008 policy report (Van Hecke et al., 2008). In the past decade, various measures have been taken with the aim of tackling the shortage. As an example, in 2007, the Flemish regional government signed a decree regarding a subsidization program for the stimulation of sports.² Subsidies would be distributed by the Flemish regional government to local governments, which developed their own sports policy plans, thereby showing their ability to consider sports affairs in the longer term. Moreover, the Flemish regional government launched a PPP program in 2008: the Flemish Sports Infrastructure Program (FSIP). The objective of this program was to reduce the shortage of sports facilities with 35 percent within a short period—that is, before 2012 (Flemish Government, 2008). In this article, we investigate this PPP program, which can also be seen as a catch-up movement.

The article begins by defining PPP and linking the PPP process with the theoretical background of contracting and standardization. Next, it provides an introduction of the FSIP and outlines the research strategy and methods used to scrutinize the contracting processes in the program. Following that, we elaborate on our empirical findings. The conclusion summarizes our argument and lists its implications.

2. PPP and contracting

We interpret a PPP as a long-term infrastructure contract (Hodge & Greve, 2010), which consists of five elements. The first element is the relatively enduring cooperation between the public partner and the private partner as it encompasses the lifecycle of an infrastructure asset. Secondly, the design, building, financing, and maintenance (and operation) stages of an infrastructure project are integrated in a one-covering contract. The third element is risk transfer; some of the risks that are

¹ Blos is an autonomous agency promoting sports in Flanders.

² This decree was part of a policy called *Sports for Everyone* (in Dutch: *Sport voor Allen*), which was implemented between 2009 and 2014, and dismantled after that (Flemish Sports Federation, 2015).

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