

Public-Private Partnerships and Democratic Governance: results from a case study.¹

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DRAFT PAPER

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Introduction

Less government, more market

The organization of public service delivery has changed substantially in recent decades. Reforms such as New Public Management (NPM) (C. Hood, 1991; Osborne & Gaebler, 1992) have stimulated Western governments to become more businesslike. In line with Osborne and Gaebler's suggestion (1992), that States should no longer 'row' but rather 'steer', markets have (partially) taken over responsibilities for delivering public services. Ideally, this should increase efficiency and effectiveness of public service delivery. As a consequence, the state takes a step back and steers private performance from a distance by using performance contracts and monitoring mechanisms. In administrative literature, the process whereby governments seek for collaboration with nongovernmental organizations for public service delivery, is also referred to as Governance (Flinders, 2010, p. 118; Stoker, 1998, p. 39). It is argued that working together with markets and other nongovernmental organizations should help states to understand the complexity and dynamics of modern societies, to reduce public spending, and to create a sense of shared "welfare responsibilities" (Stoker, 1998, p. 39).

Public-private partnerships

The increasing popularity of NPM and Governance, has resulted in many new public service delivery structures such as, among others, public-private partnerships (PPPs). There is much confusion in administrative literature on the exact definition of PPPs since it refers to a wide range of public-private arrangements with different goals, time-scales, formal and informal structures, procedures and members (Sullivan & Skelcher, 2003; Van Ham & Koppenjan, 2001; Weihe, 2008).

In that respect, Hodge and Greve (2007) even distinguish five PPP families: 1) Institutional cooperation for joint production and risk sharing 2) Long-term infrastructure contracts (LTICs) 3) Public policy networks 4) Civil society and community development and 5) Urban renewal and downtown economic development (G. A. Hodge, 2010, p. 5). For the sake of this paper, I only look at Long-term infrastructure contracts that are often referred to as Design-

Build-Finance-Maintain-Operate contract (DBFMO)². Although DBFMO is well-known in the UK and the US, it has only become popular in the Netherlands since the mid '90 and at this moment only a handful of projects are in operation. Based on current policy intentions DBFMO is expected to become increasingly important for Dutch administration in future years (Ministry of Finance 2011).

In a DBFMO contract, a public procurer signs a long term contract (20 to 30 years) with a private consortium consisting of different private partners. The consortium becomes responsible for the design, realization, funding, maintenance and operation of, for example, a road, a school, a water cleaning plant, a detention center or public utility buildings. Because of their responsibility in the maintenance and operation phase, the consortium is expected to come up with efficient and effective solutions that improve the overall quality and coordination (Tvarnø, 2010, pp. 216-217). With respect to funding, it is not the state but the consortium itself that has to invest in first instance. Besides a personal investment from all the consortium partners, the consortium lends the rest from Bank. After the asset is constructed, the consortium continues working on the maintenance and operation in order to receive monthly or quarterly payments from the state (eg. Ranson, 2003, p. 467).

Many scholars argue that DBFMO presents considerable benefits for governments. Not only do they increase the effectiveness and efficiency of public service delivery (Cohen & Eimicke, 1995, 1998, 2008; Osborne & Gaebler, 1992; Taylor, 1999), they also enable states to transfer risks and failure costs to the private sector and to draw upon private sector resources such as money and knowledge, experience and technology in order to fulfill complex social needs (Boardman & Vining, 2012; Ranson, 2003; Ysa, 2009). As a result, DBFMO is expected to recover and increase the legitimacy of the state. However, despite those positive prospects, PPPs “remain a subject to critical scrutiny” (Ranson, 2003, p. 468).

Democratic governance

DBFMO transfers risks and responsibilities for the realization of public service delivery to the private sector. According to public law, it is the State that remains responsible for the realization of public service delivery even though they no longer provide those services themselves. It is

² From this point, PPPs refers to DBFMO.

exactly this division (the state being legally responsible on the one hand and transferring the execution to the private sector on the other hand), that raises critical questions in terms of Democratic or Good Governance (Bevir, 2010; Flinders, 2010; Skelcher, 2010; Stoker, 1998)³.

Democratic Governance is a (normative) perspective on Governance as an institutional manifestation (Bevir, 2010). It provides an answer to the question of *what* governance structures as PPPs, should deliver (services and products for the public interest) and *how* they should do this (in line with traditional administrative values). It refers to ‘good administration’ or a process of governance based on values, principles and processes that can be found in the traditional democratic public and political sphere (Skelcher, 2010; Stoker, 1998). Boers (2006, p. 46) defines it as “the cohesion between, steering, controlling and monitoring of an organization in order to efficiently and effectively realize policy ideas and communication about that process in an open way on behalf of stakeholders.” The central point is that although Governance implies less Government, PPPs should still take into account administrative values such as accountability, transparency, responsiveness, responsibility and quality.

In theory, PPPs contain the “*appropriate governance mechanism*” to meet those standards. It provides flexibility for consortia and mechanisms for public officials to monitor, regulate and steer (Skelcher, 2010, p. 292). The mechanism is based on respectively the following three elements: output specifications (OS), monitoring and payment (see figure 1).

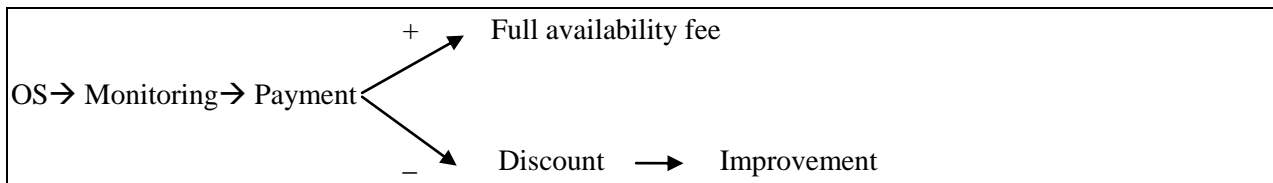


Figure 1. The Governance mechanism of DBFMO

The OS, created by public officials, indicate the scope of the project (what needs to be done) and the quality (the service level) expected by the public procurer.⁴ The consortium and the public procurer agree on the OS and the consortium creates a monitoring plan for monitoring its performance in terms of the OS. In first instance, the consortium controls itself. Besides, the

³ I here consider ‘Democratic Governance’, Stoker (1993) and ‘Good Governance’ (Boers, 2006) as equal. I will continue using the term Democratic Governance.

⁴ The State does not define *how* this must be done except when legislation prescribes specific solutions or procurers have an outspoken preference to a specific solution.

public procurer can test randomly. In order to account for its performance, the consortium provides monthly, quarterly or annual reports to the public procurer. When there is no discrepancy between the OS and the actual service delivery, the State pays the full availability fee. If, however, there is a discrepancy, the state gets a discount. Since consortia are financially driven, the discount is expected to stimulate consortia directly to improve their performance and solve problems in relation to service delivery.

Ideally the system of OS, monitoring and payment designates 1) “the appropriate level of democratic body which has *responsibility* for commissioning and *monitoring* particular public service 2) *auditing* and *accounting* procedures with which the decisions of ministers and officials must comply 3) the setting of *targets* for *performance*, the provision of *incentives*, specification of contracts, *measuring* of results to ensure that the manager of particular services are *responsible* for the *quality* of services they deliver 4) the provision of *information*, forms of redress, and opportunities for *consultation* and *participation* both to the wider public and to particular groups of service users” (Ranson, 2003, p. 472) (see table 2).

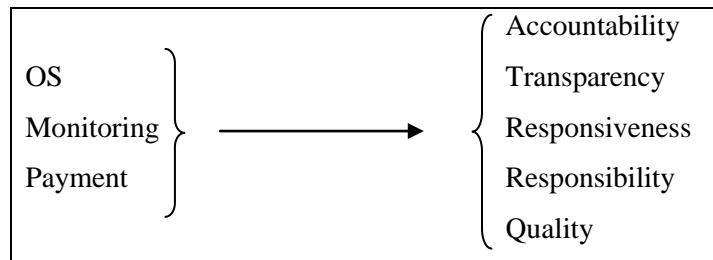


Figure 2. Ideal relation between governance mechanism PPPs and aspects of Democratic Governance

Critique

Critics, however, doubt whether this mechanism indeed provides a structure for meeting standards of Democratic Governance (see table 1).

Table 1. Perceived problems with PPPs in terms of Democratic Governance

<i>Concept</i>	<i>Perceived problem</i>	<i>Author(s)</i>
Accountability	Refers to the idea that public officials should be held accountable for public service delivery. Although markets are involved, ministers and public officials are -juridical as well as politically- held accountable for	(Acar & Robertson, 2004a; Barberis, 1998; Behn, 2001; Bevir, 2010; Bovaird, 2010b; Bovens,

	<p>private action. It is argued that PPPs diffuses political accountability because it increases the distance between political decision making and the actual provision. Skeptics fear a ‘democratic deficit’ because of a shortfall in accountability arrangements of a non elected public body.</p>	<p>Schillemans, & HART, 2008; Christensen & Lægreid, 2002; Deleon, 1998; Flinders, 2010; Frederickson & Smith, 2003; Ranson, 2003; Skelcher, 2010; Stoker, 1998)</p>
Transparency	<p>Refers to access and availability to project information on costs, agreements, quality and performance. Several scholars raise the question whether public officials still know what is going on within PPPs constructions. In this respect Brown, Potoski and Van Slyke (2006) address the issue of ‘difficult to measure services’ that perhaps frustrate transparent performance reporting. PPPs arrangements are often regarded as highly complex and a lack of transparency might damage its legitimacy.</p>	<p>(Acar & Robertson, 2004b; Altshuler & Luberoff, 2003; Bloomfield, 2006; Brown, Potoski, & Van Slyke, 2006; G. A. Hodge, 2004; G. A. Hodge, Greve, & Boardman, 2010)</p>
Responsiveness	<p>Refers to the possibilities of a PPPs construction to be responsive to political and social demands. It has been argue that long term contracts are illegitimate since they reduce political influence, and flexibility for future governments: while political and economical contexts might change, contracts stay the same. To conclude, Ranson (2003, p. 468) states that long term contracts “deny a defining characteristic of the public sphere of capacity to revise policies and practices in response to changes in need and understanding of good practice. The regime of legal regulation frustrates, rather than supports, public policy development....public-private partnerships, by strengthening over time the private regulation and management of public institutions, subvert the practice of public democratic accountability</p>	<p>(Bovaird, 2010b; G. A. Hodge, 2010; Ranson, 2003)</p>

	of the public sphere.”	
Responsibility	Refers to internal responsibility within the partnership. Private partners become responsible for public service delivery but do they take it serious? Partners are not only responsible for the partnership itself but represent other share or stakeholders too. As Child (Child, Faulkner, & Tallman, 2005, p. 55) responsibility becomes an issue: “when it’s managers are partially or wholly accountable to the partners, rather than solely to the partnership itself- and the problem is magnified where there are multiple partners and multiple agents.” Hood (2002) even describes PPPs as a potential ‘blame game’ in which public officials point to the consortium and vice versa.	(Child, et al., 2005; Flinders, 2010)
Quality	Refers to the quality of the eventual service delivered and or the asset provided by the consortium. It has been suggested that in search for financial optimization, consortia offer qualitatively low or even very low services.	(Savas, 2000)

Although on paper the governance mechanism of PPPs might make perfect sense, skeptics argue the system does not work as such in practice, resulting in problems in terms democratic governance. Public management is the first to blame when searching for an explanation for malfunctioning of the system. In relation to the OS, several authors wonder whether public officials are indeed able to write clear, unambiguous OS for which technical as well as juridical and financial knowledge is required (de Bettignies & Ross, 2010). With respect to finance, Savas (2000) suggest that public officials might fail to penalize bad performance which might be explained by a lack of knowledge on financial incentives (de Bettignies & Ross, 2010). Indeed, there seem to be very little trust in the capacity of public officials to ‘steer’. As Sousa Monteiro (Sousa Monteiro, 2010, p. 278), puts it: “Private players are usually better prepared than government departments to negotiate, manage and renegotiate PPP contracts because they are focused from the very beginning on project output and outcomes, while government departments

are usually still trying to move away from the traditional focus on the production of services (concerned with inputs and processes) to the PPP focus on the real result of the projects (output quantity and quality).” Brown and Potoski (2003) and Van Slyke and Hammonds (2003), therefore, stress the importance of building human capital for contract management that should prepare public officials to write OS, plan, coordinate, negotiate, monitor and manipulate private performance (Sousa Monteiro, 2010, pp. 289-290).

Meta-critique

In contrast to the expected benefits of DBFMO, table 1 presents a different story on DBFMO in terms of Democratic Governance. It is argued though, that this critique is based on a traditional understanding of administration and politics which does no justice to the intentional shift Western governments are trying to make (Ranson, 2003). Indeed, alternative normative frameworks that take into account this normative shift are proposed (Bovaird, 2010a; Robertson & Acar, 1999). The point those authors make is not that, for example, accountability is not important, rather that there are various ways (not only the traditional way) to meet this standard. Besides, we have to bear in mind that traditional bureaucracies also face problems with respect to accountability, transparency and so on (Rosenau, 2000; Savas, 2000). In that respect it is also argued that that some types of PPPs exist within a tighter, more transparent framework of accountability than institutions in the public sector (Flinders, 2010, p. 215).

Finally, Flinders, (2010, p. 115) warns for a “lazy way of theorizing PPP as ‘good’ or ‘bad’, ‘accountable’ or unaccountable’.” Thinking in terms of dichotomies will not help to develop a full understanding of PPP as a governance tool since their performance probably cannot be categorized in a dichotomous way. A similar point is made by Brown (2006) who argues that searching for a “one-size-fits-all judgment” is unrealistic. Finally, and this brings us to the aim of the present study, it is important to realize that both the positive as well as the critical assumptions are not always based on empirical findings but not seldom on theoretical, philosophical or ideological grounds (Savas, 2000; Skelcher, 2010, p. 292). In that respect, Bovaird (2010a, pp. 59-60), argues that empirical evidence is weak and that theory on PPPs has only been tested sporadically.

Research aim

The aim of the present study is threefold. First I want to describe how the governance mechanism of PPPs (OS, Monitoring, Payment) works in practice. Second, I want to explain why the mechanism works the way it works in each case. For example, when it appears that monitoring isn't working as expected, I want to explain what the causes are. Third, I want to determine what effect actual functioning of the governance mechanism has on the values mentioned in table 1: accountability, transparency, responsiveness, responsibility, quality.

The structure of the rest of the paper is as follows. In the next section I describe the method in terms of case selection and data collection. Thereafter I shortly discuss the data analysis method used in this study. In the result section I start with a short introduction of the case, followed by an analysis of the governance mechanism in relation to democratic governance. This means I explain how this mechanism does or does not support those values mentioned in table 1. Finally I draw the main conclusions and suggest what further research is necessary.

Method

Case selection and data collection

The findings and arguments in this paper are derived from a case study in the Netherlands conducted between September 2011 and December 2011. The case study approach allows one to examine a phenomenon in its natural setting by which insight on processes, behaviour, experiences, opinions and conflicts can be gained (Swanborn, 1996). As stated earlier, there is still hardly any experience with DMFBO projects the Netherlands. In order to fully understand the performance of the governance mechanism, I argue that it is necessary to include respectively the following three phases of which DBFMO projects consist: the procurement phase, the realization phase and the exploitation phase. At the moment of case selection, there were only a handful of projects in operation and the amount of cases that could be selected, was therefore scarce.⁵ This study forms part of a greater PhD project. For that project, 4 cases have been selected that differ on sector, goal and/or procurer (namely the renovation of the ministry of finance, a water cleaning project in region Haaglanden, a detention centre project, and the

⁵ At the time of case selection (autumn 2010) most of the DBFMO projects were still in the procurement or construction phase and thus not suitable for this study.

construction of a highway in the north of the Netherlands). For the sake of this paper I have decided only to discuss the highway project in the North of the Netherlands.

By means of data collection I conducted a document analysis including the standard contract as provided by RWS, and internal and external evaluations. Moreover, I conducted 19 semi-structured qualitative interviews with both public as well as private practitioners including, procurement team members, OS team members, contract managers, consortium members, subcontractors, lawyers, financial experts, and project directors. During the interviews I asked respondents- which are all involved in different stages of the project- about their personal experiences with PPPs in relation to the governance mechanism and to democratic governance related concepts. All interviews are taped with permission and transcribed literally.

Data analysis

In order to analyse the data I used the technique of ‘coding’ (Boeije, 2005; Miles & Huberman, 1994; Staa & Evers, 2010; Strauss; Wester, 2004). Coding refers to the organization of data into categories related to the theoretical framework and the research questions of a specific study (LeCompte & Schensul, 1999; Strauss). Depending on whether the study has a more inductive or deductive character, respectively open coding, axial coding or selective coding can be applied. Since this study is not completely inductive nor completely deductive, I adopt the ‘framework approach’ as described by Spencer (2003). Prior to the analysis, a framework based on prior knowledge and the goal of the study is constructed, combined with categories addressed by respondents. In this case the initial framework contained the following categories: OS, Monitoring, Payment, Accountability, Transparency, Responsibility, Responsiveness, Quality, and Public Management. This framework allows, as mentioned earlier, for a certain openness towards other issues, concepts or explanations that might appear to be of interest.

Results

The Highway

Background

This project was the first DBFMO project for Rijkswaterstaat (RWS) which is the executive organization of the Ministry of Infrastructure and Environment. According to public law and on

behalf of the minister and the state secretary, RWS is responsible for the design, construction, management and maintenance of high and waterways in the Netherlands. By means of a pilot it was decided to procure the road as a DBFMO project. A private consortium, consisting of several partners, is now responsible for the exploitation of a road until 2025. The exploitation started in 2008. Because of financial, organizational and safety considerations, RWS decided not to include accident management and de-icing in the scope of the contract. The responsible district, region Friesland, became responsible for contract management of this specific project.

<i>The output specifications</i>	
Responsiveness	<p>With respect responsiveness, here defined as the capacity of the public or public officials to influence service delivery, the creation of the OS formed a great challenge. There was hardly any knowledge available within the district or within the central organization of RWS on writing the OS. Therefore, external advisors were hired in order to advise RWS in relation to the financial, and juridical aspects of the OS. Several public officials wondered what task was left for RWS as a public organization: <i>“If you are not careful, DBFMO becomes a party of the externals. But when we are ought to steer, and we let external advisors design our steering mechanism, why then do we exist?”</i> Procuring DBFMO is a complex task and when public officials depend partially or completely on external parties for their own house holding, one might indeed wonder whether the level of public involvement is sufficient.</p> <p>With respect to the long-term character of the project, public officials argue that as soon as the OS is formally agreed upon, there is hardly any possibility for public officials and politicians to change the OS when it comes to cut-backs. A public servant argues: <i>“If I tell them, you should only cut the grass once a year instead of 4 or you should now turn of the lights during the night, they give me only one euro back and tell me that’s the price they calculated for those services.”</i> At the same time it was argued that, PPPs thus creates an opportunity to safeguard quality and safety standards by isolating it from the obstinate political context.</p> <p>When the public procurer wants to change the OS in terms upgrading services and the public partner is willing to pay for this, the possibility to change the OS do increases. The consortium does, of course, not automatically agrees to deliver extra services and eventual changes are therefore very often preceded by discussions</p>

between the public and private partner about whether the service wasn't already included in the OS itself. Several public officials argue that this delay in decision-making is not problematic per se but that it can become problematic when sudden changes have to be implemented or direct action is necessary. There, however, always exist the possibility for the public partner to intervene, for example by closing the road, when in their opinion safety or security is at stake.

With respect to sensitiveness of public officials in relation to safety and security, this case provided an example that made clear that the agreements made hindered 'reasonable behavior' and decision-making by public officials. Earlier than expected, the consortium finished the construction of a two-lane road that was located next to an already existing two-lane road. The consortium decided not to make the new road officially available yet, since the availability fee would only start at the official deadline. Although the consortium followed the agreements made, it appeared not to be the best decision for RWS. Two car accidents occurred as a result of ghost driving. It appeared unclear to road users that the newly constructed two line road was not available yet and that oncoming traffic could be expected on the available two-line road. RWS was eventually held responsible for the unsafe situation. A public official argues: *"Here RWS should have been more alert for risks. We should have said that we would pay for the earlier availability of that road. But because you are in such a juridical structure, you don't think about that in first instance. It is fine in juridical terms, but a bad decision in practice."*

With respect to the influence of public officials, there has been an example in which the Province, that normally negotiates with RWS about infrastructure plans, became isolated from the traditional decision-making process between RWS and the consortium. RWS wanted to construct a bridge of a certain quality which they agreed upon with the consortium. When the consortium wanted to start the construction, the Province argued that the bridge did not meet the quality standards that they themselves had agreed upon with RWS several years ago. The consortium argued they were following the OS as designed by RWS and that they would not change that plan. Eventually RWS obliged the Province to prove that this agreement was made, which they couldn't since it only concerned a verbal agreement. While the Province and RWS normally would reach a compromise, the contract and related responsibilities and deadlines, impeded this.

	<p>As with any other infrastructural project and according to public law, it remains possible for interested individuals and parties to raise objections about the project during the preparatory phase. The fact that the project has been procured as a DBFMO project, does not change this legal procedure. In this case, for example, the local sailor organization managed to change the original OS in order to force the construction of a specific type of bridge.</p> <p>With respect to information sharing with citizens through the media, it was first decided that the consortium would become responsible for that task. However, during the project, RWS decided to take that responsibility back. As a public servant argued: <i>“It cannot be true that the consortium is going to tell our story. We remain responsible and therefore we want to inform our environment on what is going on.”</i> In that respect, communication with citizens will be handled by the district or RWS itself, although complaints can also be send to the consortium that has its own official website with information about the progress of the project.</p> <p>Although public officials are satisfied with the eventual product, they do experience difficulties with regard to their role as contract managers on behalf of RWS. On the one hand this can be explained by the fact that this is only the first DBFMO project for RWS, on the other hand public officials themselves suggest the contract is and has been managed by perhaps not the most capable people. A contract manager describes: <i>“We are supposed to know what is going on and to steer when necessary but you should realize that we are all designers, technicians or constructors and suddenly we have to act like contract managers. I don’t know whether it’s fair to ask that from us.”</i></p>
Quality	<p>In the OS, the public procurer lays down what quality is expected. Ideally, these specifications indeed lead to the delivery of the demanded quality. In relation to the safeguarding of quality, DBFMO and the special way in which it is procured, might be a complicating factor especially when one wants to be absolutely sure that a specific solution or service level will be provided. DBFMO requires that public procurers leave room for interpretation so the consortium can come up with innovative ideas. In this case, the OS team tried to develop a framework of minimum demands, accompanied by an outline law. During the project, and especially during the exploitation phase, discussions on the interpretation of those norms arose. It appeared that crystal clear norms internally used by RWS for years, were too ambiguous as a contractual norm.</p>

	<p>This led to ‘creative interpretation’ of norms that did not always correspond to the original intention of the procurer. A public servant argues: <i>“You get what you ask but sometimes there is confusion about that ‘what’. It might be very clear to me, but the consortium will always try to interpret it in such a way that they benefit from it. So if you do not write down explicitly what you want, you might not get it at all.”</i> Besides ambiguous norms, the incompleteness of the OS formed a source of discussion between the public and private partner. While RWS argued that a specific service was included in the contract, the consortium argued it was not.</p> <p>The consortium indeed came up with their own solutions which, even though they met all formal criteria’s, were not always satisfying for all public officials involved. A public official argues: <i>“Here you clearly see two types of public officials. On the one hand those that believe in alternative solutions rather than the RWS solution and on the other hand officials that believe the only solution is the best solution and thus the RWS solution. And the RWS solution is very often, the most expensive solution.”</i> Within RWS public officials did not agree whether the proposed solutions did indeed comply with the demanded quality as specified in the OS. In that respect one might conclude that although the OS indicate and frames private action, a grey area for free interpretation remains and it is the question whether it is possible to write an unambiguous and complete OS at all.</p> <p>Public officials, especially at the operational level, had little trust in the consortium as a reliable executer. As a result, public officials responsible for the management of the contract, held on tight to the OS. As a result, norms were suddenly interpreted far stricter then would normally be the case. The consortium, and this was confirmed by public officials, accused the contract management team of interpreting these norms stricter then they would do in traditional RWS projects. A public official argued: <i>“I don’t like that reflex I must admit. We should not try to create heaven on earth by demanding more of the consortium then we ask ourselves. Of course, we have to control and we have to be critical, but sometimes I have to admit we become over enthusiastic and start exaggerating.”</i></p>
Responsibility	<p>The OS, indicates how risks are distributed. This means, it is clear what the consortium ought to do and what risks remain with the procurer. However, and here the art of interpretation comes along again, in practice public and private partners do discussions about who is responsible for what. This can partially be explained by the quality of the</p>

	<p>OS. Moreover, the dynamics within the consortium itself might explain why responsibility remains a sensitive topic. On paper, the consortium as a whole becomes responsible for the design, construction, maintenance and operation of the asset. Although the consortium sells an integrated proposal in which the different disciplines are optimally fine-tuned, the eventual integrality between consortium partners disappears during the project. When the exploitation company, for example, experiences difficulties because of a mistake made by the constructor, the cooperation on the private side might end up in a blame game. When none of these parties is willing to take its responsibility, a problem of the consortium might become a problem for the public procurer. In this case, however, public officials argue, they cannot complain in that respect. Although the blame game was played occasionally, the board of the consortium managed these conflicts well. A consortium member argued they were well aware that the different disciplines might transfer risks to the other consortium partners. Therefore they decided actively steer on that aspect by not separating the design and construct contract completely from the exploitation and maintenance contract. As such, the construction company could still be held responsible during the exploitation.</p>
<p>Transparency</p>	<p>Although the creation of the OS was a challenging task, public officials do argue it helps to professionalize the overall project preparation. A public official argues: <i>“Normally we think 3-4 years ahead and then we will see. If the design is not finished yet, we will fix it during the realization. But you see that that’s where the big troubles start. Here, I cannot afford it to sit back and wait. I have to think very carefully what I want and that makes the direction, deadlines, content and costs far more transparent.”</i></p> <p>DBFMO furthermore makes mistakes made by the procurer more visible than is the case in traditional projects. In DBFMO, all modifications of the OS get registered since it effects the monitoring and financial mechanisms. Costs of extra work, which normally would not be taken into account, now become perfectly transparent. In relation to the adjustment of the OS, public officials do wonder whom will be able to maintain oversight on all the agreements made. People leave the organization and even though every adjustment is registered, it will be impossible for future officials to understand the projects over its full length. A public officials describes: <i>“There is more than one meter of documents with the OS and adjustments. That plus all the reportages from the consortium, makes a big book. Yes, it is information but I think it is an</i></p>

	<i>information overload. But that is what happens with projects that 20 or even longer.”</i>
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<i>Monitoring</i>	
Transparency	<p>In order monitor the project, RWS depends on the certified quality systems of the consortium that monitors its own performance and reports on this (depending on the type of data and the project phase) annually, quarterly, monthly or weekly. The consortium makes an analysis of possible risks and designs a system to manage those risks. The district has an exploitation team that study and discusses these reports. In general the district is very pleased with the system of monitoring and reporting, especially because such a systematic way of monitoring and reporting was not used in traditional projects.</p> <p style="padding-left: 40px;">The monitoring system and performance reports, are indeed sources of information for the public procurer that allows to follow the project. Several public servants argue, however, that sharing information is not about <i>“creating loads and loads of documents”</i> but about information in <i>“the minds.”</i> In that respect, they argue that DBFMO creates a great challenge for public organizations when it comes to information sharing and safeguarding <i>“the memory of projects”</i> in the upcoming years. During the project, people that know a lot about the OS, and it’s adjustments leave. And although the rules of the game and the performance of the consortium are neatly written down, <i>“the soul and finesse of the project might disappear and this might harm our negotiation position.”</i></p>
Quality	<p>When it comes to the actual monitoring, the consortium makes an analysis of possible risks and designs a system to manage those risks. When RWS does not feel one hundred percent comfortable with this plan, they are able to test the proposed monitoring system, the process or even the quality of the product. RWS indeed conducts such test occasionally. The contract management team does not have full confidence in the way the consortium monitors itself: while the reports offered by the consortium show in a transparent way how the consortium performs with respect to the OS, public officials do get confronted with irregularities: <i>“It happens that on paper everything is correct but then how can they explain that we sometimes do the same test and have different outcomes?”</i> These irregularities might be a result of again 1) a difference in the interpretation of norms or 2) differences in measurement techniques or 3) a failure of the monitoring system or 4) pure manipulation. <i>“When we confront the</i></p>

	<i>consortium with these numbers, they always have or invent an explanation. But it does give us an extra weapon in order to steer on the quality of the asset.”</i>
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<i>Payment</i>	
Quality	In general the contract management team is positive about the effect of discounts in relation to the quality of service delivery. A public servant argues that discounts create an opportunity to continuously stimulate the consortium: <i>“I am in a continuous search to stimulate them in order to get what we want. Sometimes, the OS is not enough and when requesting them repeatedly also fails, I at least have the financial system that perhaps does activate them. So when it’s not going the way we want to, I search how we can hurt them in financial terms.”</i> The consortium, in fact, accused RWS of intentionally searching for fines in order to earn money back. The intervention of a mediator eventually normalized their relationship.
Accountability	The discount mechanism, sometimes appeared to be disproportionate to its true objective. At a certain moment, RWS would get a discount of 34 million euro’s. Each day that the consortium was not able to prove that the road had been formally available (although the road was in use) a discount was registered. Since the consortium only monitored this formal availability every two years, they were, in theory indeed unable to prove that the road had been available over the last two years and as a consequence, RWS wasn’t able to account for this either. Eventually the contract management team did not do anything with the discount and the consortium increased its level of reporting on the availability of the roads and it’s monitoring intervals.

Conclusion

The aim of this study was first of all to describe how the governance mechanism of PPPs works in practice. Secondly, I wanted to explain why the mechanism works the way it works. And third, I wanted to determine what effect the actual functioning of the governance mechanism has on the values mentioned in relation to democratic governance (accountability, transparency, responsiveness, responsibility, quality).

This case shows that the governance mechanism as designed on paper, does not function as such. In relation to all three elements, OS, Monitoring and Payment, irregularities were found within the case. The malfunctioning of this system can indeed be explained partially by

suboptimal management from the public side. Incomplete and ambiguous norms in the OS create grey areas and leave room for creative interpretation. It is, however, the question whether this sub optimality can be overcome at all. Besides the actual function of the system also seems to depend on the way the consortium organizes itself. When the consortium is confronted with internal discussions, this affects the eventual functioning of the governance mechanism. With respect to Democratic Governance, this case indeed shows that a “lazy way of theorizing PPP as ‘good’ or ‘bad’, ‘accountable’ or unaccountable’, does not make sense. All aspects of Democratic Governance were supported but at the same time not supported by the governance mechanism. With respect to responsiveness and the OS, this case shows that while on the one hand public officials can influence the content of the project, on the other hand examples can be found in which public officials aren’t able any longer to influence the project. It is therefore not possible to make a straightforward and conclusive statement about whether PPPs do indeed take Democratic Governance into account.

This study cannot of course be viewed as conclusive. Additional research including the analysis of further cases in other sectors and with other purposes is necessary in order to separate DBFMO specific aspects from case specific aspects. A comparison with cases from different sectors might reveal how the specific context of a DBFMO project or its purpose, influences the way the mechanism works. When the exploitation is rather straightforward, for example, one might expect the mechanism to work better than is the case when norms are difficult to quantify.

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