



THE CHALLENGES OF PUBLIC- PRIVATE PARTNERSHIP PROJECTS

June 2015



I – PUBLIC-PRIVATE PARTNERSHIPS IN FRANCE



I – PPP in France

A RECENT CONTRACTUAL MODE

Observation:

- Concessions meet the requirements of public services, which can self-finance via tolls or usage charges
- Requirement to respond to the growing expectations of users in areas where public funding is not available due to the large amount required
- Necessary association of the private sector

- In the absence of appropriate legal tools, the consequences are:
 - ➔ the deterioration of infrastructure
 - ➔ investments postponed

↪ **creation of contractual tools not coming within the French scope of public contracts or concessions**



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THE VARIOUS PUBLIC-PRIVATE PARTNERSHIP CONTRACTS IN FRANCE

1. **"Construction" public-private partnerships created in 2002-2003 in defined areas (internal security, armed forces, justice and health)**

BEA	Administrative Long-Term Leasehold Contract
BEH	Hospital Long-Term Leasehold Contract
AOT-LOA	Authorisation for temporary occupation of public property associated with a rental contract with a purchase option

2. **The "overall" public-private partnership created in 2004
= the partnership contract**



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THE FRENCH LEGAL FRAMEWORK RESULTING FROM COMMUNITY LAW

European law	Concession contracts Directive n°23 dated 26 February 2014	Public contracts Directives n°24 and 25 of 26 February 2014	
French law	Public-service delegations Acts dated 6 February 1992, 29 January 1993 and 11 December 2001	Public procurement Public procurement code (decree dated 1 August 2006)	Partnership contracts Ruling dated 17 June 2004



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WHAT IS A PARTNERSHIP CONTRACT?

Long-term contract (10 to 35 years or more)

by which a public entity assigns an overall task to an economic operator...

- for design, implementation and funding
- for maintenance/upkeep and/or operation or management of the structure

... for the exercise of the public-service assignment for which it has been made responsible.

Associated with flexible payment terms, spread over the duration of the contract and related to performance objectives



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CONDITIONS FOR THE USE OF PARTNERSHIP CONTRACTS

An exceptional mode of public procurement

The contract must be justified by a prior evaluation demonstrating:

1. the complexity of the case
2. or the urgency
3. or the advantages of using this contract in relation to other contractual tools in terms of:
 - Cost
 - Deadlines
 - Performance
 - Risk sharing
 - Sustainable development concerns



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THE PROCEDURE FOR CONCLUDING PARTNERSHIP CONTRACTS

Respect for fundamental principles:

- Freedom of access
- Equality of treatment of applicants
- Transparency of the procedure

Publication of an advertising notice

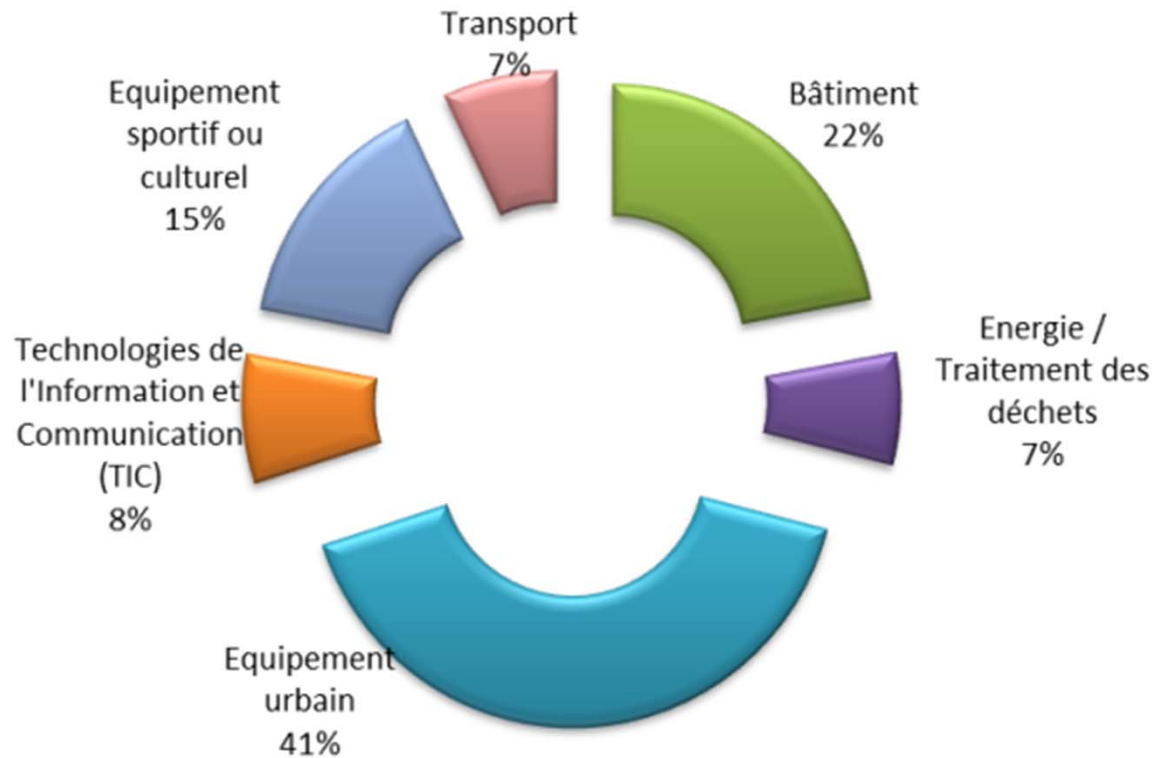
Procedures:

- Competitive dialogue
- Restricted call for tenders
- Negotiated procedure for the design and/or implementation of work costing less than €5,186,000 excluding VAT (€134,000 in other cases)



TYOLOGY OF FRENCH REGIONAL AUTHORITIES' PARTNERSHIP CONTRACTS

150 PROJECTS ON 05/11/2014 FOR €4.1 BILLION



Transport 7%

Building 22%

Energy / Waste processing 7%

Urban facilities 41%

Information and communication technologies (ICT) 8%

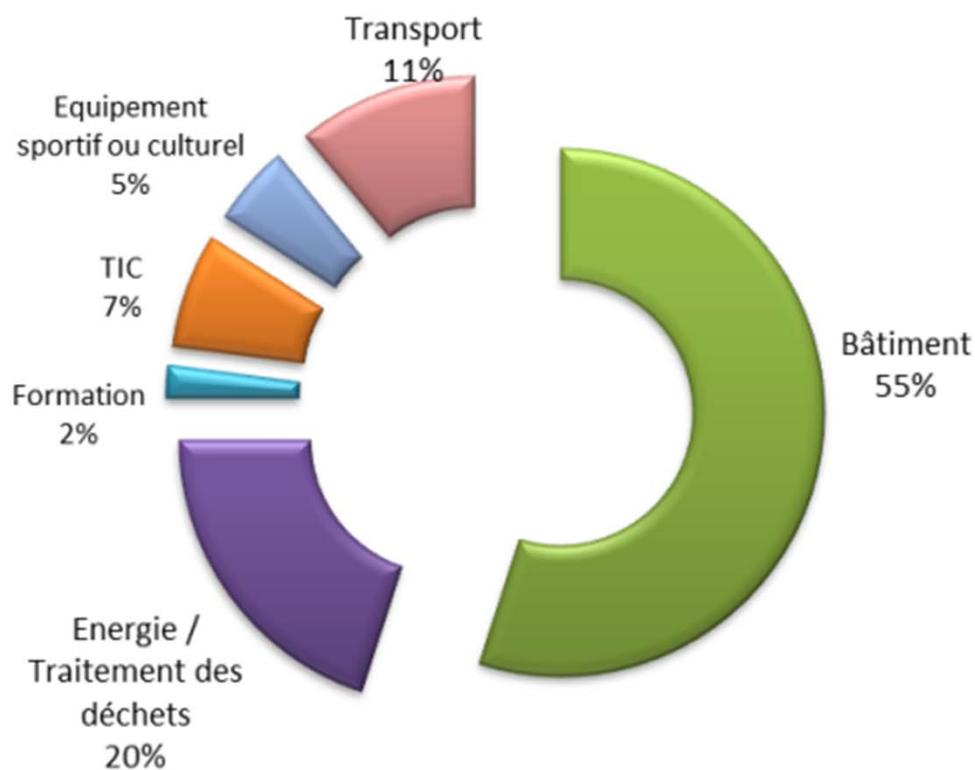
Sporting or cultural equipment 15%

Average value of contracts:
€26M



TYOLOGY OF THE FRENCH STATE'S PARTNERSHIP CONTRACTS

55 PROJECTS ON 10/02/20015 FOR €10.6 BILLION



Transport 11%

Building 55%

Energy / Waste processing 20%

Training 2%

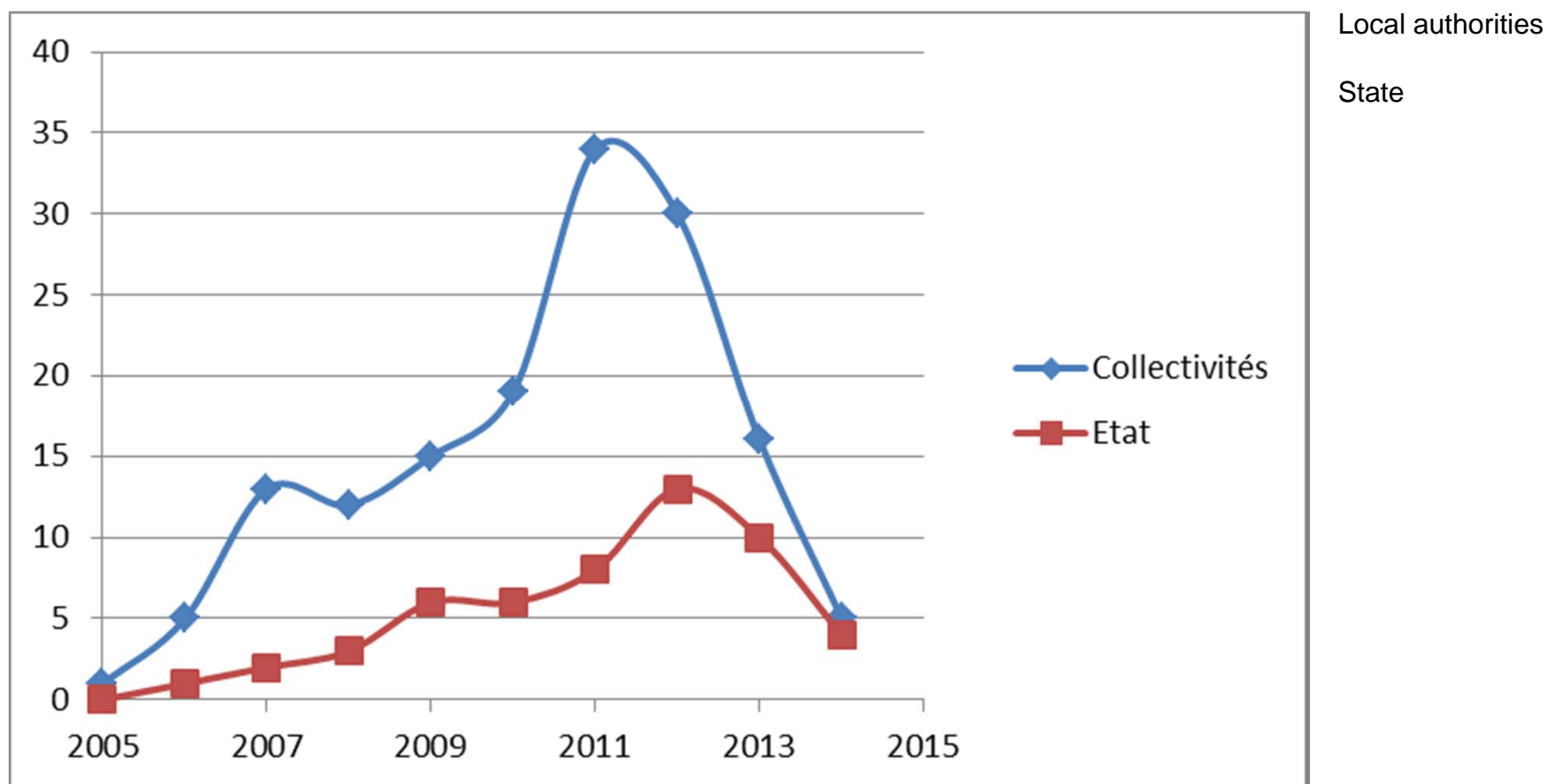
ICT 7%

Sporting or cultural equipment 5%

*Average value
of contracts:
€250M*



CHANGE TO THE NUMBER OF PARTNERSHIP CONTRACTS SIGNED





II – BENEFITS AND RISKS OF PARTNERSHIP CONTRACTS IN FRANCE



II – Benefits and risks of French partnership contracts

THE BENEFITS EXPECTED FROM THE PARTNERSHIP CONTRACT

Overall cost of the project reduced over its lifetime

→ better integration of project's phases

Shorter implementation deadlines

Better quality of service through remuneration by performance



II – Benefits and risks of French partnership contracts

THE SHORTCOMINGS DETECTED BY THE FINANCIAL JURISDICTIONS CONCERNING PARTNERSHIP CONTRACTS

- **Before assignment of the contract**

Insufficient prior evaluations:

- complexity criterion rarely established
- comparative analyses based on assumptions in favour of this contract
- the valuation of costs related to the distribution of risks is in favour of the contract

- **During the assignment of the contract**

Disregard of competition rules in the contract assignment procedure



II – Benefits and risks of French partnership contracts

THE SHORTCOMINGS DETECTED BY THE FINANCIAL JURISDICTIONS CONCERNING PARTNERSHIP CONTRACTS

- **During the implementation of the contract**

Risk of the contract becoming unbalanced over the long term:

- Mandatory clauses not specified
- Imprecise or even incoherent financial clauses
- Clauses not complied with

Insufficient contract monitoring:

- No dedicated personnel, service outsourced
- No annual activity report produced by the economic operator or it is not communicated to the meeting
- Renegotiations of contracts (at 97%)
 - adjustment of scope, financial terms and/or performance objectives



II – Benefits and risks of French partnership contracts

THE SHORTCOMINGS DETECTED BY THE REGIONAL *COUR DES COMPTES* CONCERNING PARTNERSHIP CONTRACTS

- **During the implementation of the contract**

Impact on the financial situation of local authorities:

- Non-compliance with accounting rules
- Real impact on indebtedness and local authority budgets

↪ **The observations of financial jurisdictions:**
this contract does not have decisive advantages for local authorities compared to conventional methods of public procurement or delegated management



II – Benefits and risks of French partnership contracts

THE OBSERVATIONS OF THE FINANCIAL JURISDICTIONS

Justified subject to demonstrating budgetary sustainability and proper control of assignment procedures

To be reserved for significant investment amounts

Can provide a solution to short-term budgetary difficulties, but:

- cannot resolve them
- serious restrictions over the long term



II – Benefits and risks of French partnership contracts

THE RECOMMENDATIONS OF THE FINANCIAL JURISDICTIONS

3 recommendations for regional authorities

4 recommendations for the State



II – Benefits and risks of French partnership contracts

EXAMPLES OF SUCCESS / FAILURE



Renovation of the incineration plant at Univalom (Alpes-Maritimes department)

- Well-negotiated contract (more than a year of competitive dialogue)
- Annual income ensured from the sale of electricity produced by burning waste
- Evolving contract: options to have the services developed



Marseille (Bouches du Rhône department) velodrome

- Perfunctory analysis of requirements
- Numerous risks borne by the local authority
- No control of the performance of the contractor



CONCLUSION:

THE CHALLENGES THAT THE
REGIONAL *COURS DES COMPTES*
MUST COPE WITH