THE UNIVERSITY OF MELBOURNE

PPP Policy Proposal

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1 Introduction

As quickly becomes apparent from looking at literature on the efficacy and definition of public private partnerships (PPP); it is a varied, largely inconclusive, inconcise and often overhyped phenomenon that has just as many arguments for as against. Largely, the problem seems to lie in the execution and that the 'hype' can cast a shadow on the important granual details that can stand in the way of success (Hodge & Greve, 2009; Hodge, 2004; Link, 2006). Following the previous paper, this also follow the broader definition of PPP as argued by Savas (2000) in which privatization also is included. While it is arguably so that the case for engagement in a PPP needs to happen on an per instance basis due to the complex set of stakeholders and concerns, attempts has been made at creating generic guidelines and rules (Macdonald, 2017; Vining & Boardman, 2008). This paper sets out to present recommendations on how, specifically contracting of PPPs, can better be handled from the governmental and political side following a series of unfortunate episodes with bad contracting of PPPs and flawed delivery in Norway between 2016 and 2017. This paper specifically focus on one episode of the contracting out of the waste collection in Norway's capital Oslo, but will also touch on related episodes where PPPs put the service delivery and security of the public at risk.

In 2015 the city council of Oslo engaged in a tendering process for the waste collection of the city's four regions (Bjørnestad & Kirkebøen, 2017; Tømmerås, 2015, 2016). For the first time, one company won the tender for all the four regions—the inexperienced and new company Veireno AS. With a bid 16% and $12 million below the next, Veireno AS was to start managing Oslo's waste disposal in October 2016 (Ibid.). After having done so for one month, the city council had in November 2016 received about 18 000 complaints on Veireno AS's lacking ability to deliver on its promise—and to deliver at all. Due to a lack of any retained residual capacity and to an unequal power relationship in the contract, the city council was largely incapacitated in doing anything about the situation until March 2017 when Veireno AS settled for bankruptcy. Veireno had managed to violate the Norwegian Working Environment Act more than 2000 times and the council had received more than 30 000 complaints (Lavik & Hellesnes, 2017; Taylor, 2017).

2 Report

Since the delivery of the previous assessment, the Norwegian branch of Deloitte has released a report regarding the specific case of Veireno AS and the city of Oslo (Gjennomgang Av Anskaffelsesprosess Og Kontraktsoppfølging 2017). It clears both the current and previous council of any wrongdoing and argue that the problem rather lies with the municipality of Oslo's Renovation Agency, which bridges the concerns of the public and the private delivery handled by Veireno AS. The report argue that the Renovation Agency followed the requirements

and intentions set by the council but that it put price concerns above all other, which in turn overrode concerns for the contracting company's ability to deliver. Specifically, it is argued that the Renovation Agency devalued concerns for wages, working conditions, innovation and environmental concerns and that it failed to take advantage of the agency's expertise within the field in question and ensuring confidence in the contracting company's ability to deliver on its promise. Deloitte argue that the Renovation Agency failed in taking advantage of the broad possibilities of the regulations involving privatization of public services and that this caused the unequal power relationship that followed.

On April 27, the deputy head of Oslo Høyre, the party of the previous city council, was asked the question of whether or not it was the council's responsibility to ensure that contracts for PPPs accounted for scenarios like the one that unfolded and were thorough. He answered that "[…] to expect that the council and politicians should oversee the several thousand contracts that the municipality of Oslo engage in every year is futile […] politicians and the council should rather be concerned with providing directives and setting budgets" (Dagsnytt Atten - 27.04, 2017). What the deputy head simply neglects is the council's ultimate parliamentary responsibility to ensure public service delivery and that in failing to provide the necessary regulations ensuring appropriate contract terms when privatizing, the council becomes complicit in the ultimate failure of this PPP effort. This is not the view of the aforementioned report by Deloitte, but neither does the report go into detail as to whether or not the current regulations were sufficient. It can be argued that under any form of a power principle, it is not the politicians job to set and enforce regulation and so it becomes a paradoxical situation insofar as the politician are responsible, but can not touch it directly. Conversely, it can also be argued that this distance between the political level and the details of the PPP and its elements provide unnecessary leeway for politicians not wanting to take responsibility for the failure of a PPP-project. In regards to the outcome of Deloitte's report it seems certainly so that large parts of the faults lies with the risk evaluation in the tendering and the precision of the contracting process (Gjennomgang Av Anskaffelsesprosess Og Kontraktsoppfølging 2017).

3 Private Information

In the same timeframe as the Veireno case there has been two episodes regarding privatization contracts not being thorough or explicit enough resulting in engineers in foreign states having demonstrated access to sensitive infrastructure and information. First, the telecommunications company Broadnet maintaining open fibre cables and parts of the closed-off, essential fibre cable network for emergency communications outsourced the maintenance of the non-essential cables to India. As the result of a human error, engineers in India was, for an undisclosed or unknown period of time given access to the highly sensitive and critical, closed-off fibre cable network (Dagsnytt

Atten - 10.02, 2017; Indiske IT-arbeidere Har Fortsatt Tilgang Til Nødnettet, 2017; Hadland, 2017). On the face of it, this was a clear breach of the contract between the private company and the Norwegian government. The same was the case when the Norwegian Broadcasting Channel (NRK) on May 3, 2017 disclosed that more than one hundred foreign engineers from Eastern Europe and parts of Asia had been given administrative privileges to sensitive medical information and the social security number of more than 2.8 million Norwegian citizens, amounting to half of the country's entire population (Dagsnytt Atten - 03.05, 2017; Remen & Tomter, 2017). The South-Eastern Norway Regional Health Authority (HSØ), looking to merge its many data systems, outsourced the job and the future maintenance of its ICT to the American owned Hewlet Packard Enterprise. As soon as the plan to flag out this part of the service delivery became known, it met resistance from both politicians, IT/data experts and medical professionals due to the risk of sensitive information getting into the wrong hands (Ibid.; Galt Å Outsource Helseopplysninger Om Halve Norge, 2017; IKT Modernisering I Helse Sør-Øst, 2017). Even though the contract governing this job was specific in terms of the handling of these sensitive data, ensuing breaches caused highly sensitive information to be readily accessible beyond any acceptable scope (Remen & Tomter, 2017a). It was furthermore a fact that the outsourcing was heavily debated where proponents against the proposal argued for exactly this scenario (Galt Å Outsource Helseopplysninger Om Halve Norge, 2017; IKT Modernisering I Helse Sør-Øst, 2017).

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It is evident that the routines, regulations and contracts regarding PPPs in Norway are lacking in one or several aspects. Of the three cases we have discussed both Veireno and HSØ are agreements introduced and handled on local levels, while Broadnet operate on a national level. It can be argued that the problems seen in aforementioned cases this might be a result of the same disillusion that Huxham & Hibbert (2008) and Hodge, Greve & Boardman (2010) show, where PPPs regularly are unable to live up to its promises and that this in combination with lacking efforts in critically assessing the risks cause contracts to contain rather severe uneven power balances. Furthermore, the aforementioned case examples show an arguably relaxed or inconsiderate attitude towards establishing and maintaining strong, clear and measurable review procedures. In the case of HSØ, there is no exclusive rationale for why foreign engineers would need to have access to actual and sensitive data, rather than merely generated samples. As such, true consideration of the risks involved should have been able to highlight this issue and to find solutions mitigating these risks. Even more so given the explicitness of the risks in this specific case.

As a template for some aspects that should be considered in terms of PPP contracts we will first look at the eight rules for governments as set out by Vining & Boardman (2008). The intention of Vining & Boardman's rules is to help governments avoid high transaction costs, and ultimately

to avoid PPP failure and for the context of this paper, four are of special importance: 1) establish jurisdiction enabling transparency in the details of the PPP, 2) separate analysis, evaluation, contracting and oversight of the PPP, 3) include standardized and arbitrary procedures in all PPP contracts and 4) avoid stand-alone private sector shells as to ensure that the contracting company has sufficient equity at risk. In the light of the aforementioned case examples it is apparent that rule 1 and 2 is generally fulfilled. There is transparancy and different agencies are involved in different parts of the tendering, procurewment and evaluation aspects—but that weak consideration for rule number 3 leaves too much latitude (Gjennomgang Av Anskaffelsesprosess Og Kontraktsoppfølging 2017). On rule number 4, in the case of Veireno not delivering and going bankrupt, there was no liability for any parent company or for the owner of the company. As such, there was little contractual pressure that could be issued from the city council.

Second we will look to Hodge (2004), Streets (2010) and Firmenich & Jefferies (2016). Hodge (2004) argue that, in the case of infrastructure PPPs, the risks initially allocated to the contracting party eventually are paid for by the government as they pay for the facility constructed over the longer term. The same argument is evident in Firmenich & Jefferies (2016) in that a focus on, and optimization of, the project's life-cycle costs instead of investment costs enable a better view of the financial gains and risks. In terms of the privatization PPPs we are discussing in this paper, the concept argued by Hodge would still follow; although Veireno, Broadnet and Hewlet Packard Enterprise incur a large risk during the procurement, they are more easily relieved of the risk as they do not have a responsibility to constituents either before nor after the procurement. Steets (2010), in focusing on accountability in PPPs and principal-agent theory, argue that "accountability is a mechanism to ensure that the agent does not abuse his authority and acts in the best interest of the principal" (Steets, 2010, p.15). In order for the principal (government) to be able to trust that the agent (contracting company) will both be able to perform and do so within the scope, it needs information about the agent's behaviour. Steets argue that the principal's utility function differ from that of the agent and that therefore the agent does not automatically act in the best interest of the principal. This fact goes to the core of the debate on the efficacy of PPPs as discussed in the previous essay whereas diverging goals, uncertainty and information asymmetry brings disadvantages to the parties involved. Accountability rests on the outlined entrustment and the outcome of the chosen cases does not necessarily induce any sense of trust in the private sector's ability to safely provide to the public sector—though, all the cases discussed was discussed due to their failure and does not necessarily paint representative picture of the quo. Firmenich & Jefferies (2016) also argue that a risk needs to be identified in order to be assessed, mitigated and managed. From the cases discussed, all are the result of identifiable risks not being sufficiently managed by the contracting companies as well as the transfers and the added risk of decentralization not being scrutinized to a level that was sufficient.

Lastly we will look to Greve (2008) which argue that there is a reason to why public services, which in our case is being contracted out, was public in the first place; they are complex. And the more complex they are, Greve argue, the harder it is to specify a clear contract. It is further a problem for contract work that public providers often do not know what they want from the market; which aspects they want to reduce or streamline, and which aspects they want to improve and address. Greve argue that contracting for public services can be hard in that details of the service can be large, complex and implausible to cover all eventualities. As such, monitor and evaluation work gain a larger role (as well as costs) and flexibility to adjust details is important; good governance lies in a clear base contract, monitoring, evaluation and flexibility to adjust accordingly. Whereas Veireno AS might have had a solid contract with the Renovation Agency, that contract can not have provided the necessary true flexibility to solve the inherent chaos both parties stood to create over time. Any new regulation therefore should emphasize the very fine balance between Greve (2008) and Vining & Boardman's (2008) second highlighted rule. Standardized and arbitrary aspects within the contract should be strong and raise the bar for what is required, but should be wary of eliminating the flexibility that will allow the contract to better adjust to circumstances and lessons learnt during the procurement.

5 Recommendations

Following the above, short argumentation, we are able to provide a set of recommendations of policy changes for the contracting of PPPs in Norway to be instituted on a national level with the goal of securing the reliability and safety concerning privatized service delivery. First and foremost, given the plenitude of data showing mixed gains with PPPs and the specific Norwegian cases discussed, it is evident that, regardless of the service to be delivered or otherwise partnered, there is room for tighter regulation.

On the basis of Vining & Boardman's (2008) second rule in conjunction with Steets (2010) arguments on accountability, we propose greater national rules concerning the evaluation of risk and to what extent risk evaluation should be done by a third party. Concerns should better prioritize those of the public due to the plenitude of evidence regarding the efficacy of PPP efforts.

All the three of cases discussed are, rather obviously, the result of the occurrence of a risk that in an implicit or explicit sense necessarily was assessed during the contracting process. There will always be risk, and some risk cannot be truly mitigated—only managed. But the way in which identified risk and concerns is assessed for services that the public sector is set to be providing should be overridden by, and be exclusive of, any interest that the private sector has. As such, and in accordance with Vining & Boardman's (2008) third rule, we recommend that standardized and arbitrary rules for the contracting process should be implemented so that the treshold for engaging

in unneccesary high risks is taller even after a third party assessment. This would make it more difficult for the private sector to have any influence in the proposal and tendering processes and leave their influence to the details of the contracting process. Remaining on Vining & Boardman's (2008) third rule, we also recommend that the weighting problem illustrated in the Veireno case be formalized into standardized rules governing any PPP tendering and contracting process.

Lastly, and as also well illustrated by the Veireno case, we recommend, in accordance with Vining & Boardman's (2008) fourth rule, that the government, acting on behalf of the rest of the public, should not engage in a partnership with a private company that does not at the same time as the public take on sufficient amount of risk.

6 Bibliography

Bjørnestad, S., & Kirkebøen, S. E. (2017, February 23). Veireno-sjef tok opp ulovlige lån fra eget konsern. Men kommunen sjekket ikke revisorens bemerkninger. *Aftenposten*. Retrieved from www.aftenposten.no: http://www.aftenposten.no/osloby/Veireno-sjef-tok-opp-ulovlige-lan-fra-eget-konsern-Men-kommunen-sjekket-ikke-revisorens-bemerkninger-615846b.html

Dagsnytt Atten - 27.04.2017. (2017, April 27). *NRK Radio*. Retrieved from radio.nrk.no: https://radio.nrk.no/serie/dagsnytt-atten/NMAG03008417/27-04-2017

Dagsnytt Atten - 10.02.2017. (2017, Februar 10). *NRK Radio*. Retrieved from radio.nrk.no: https://radio.nrk.no/serie/dagsnytt-atten/NMAG03003017/10-02-2017

Deloitte AS. (2017, April 27). *Gjennomgang av anskaffelsesprosess og kontraktsoppfølging i Renovasjonsetaten*.

Firmenich, J., & Jefferies, M. (2016). Risk management in ppps: Emerging issues in the provision of social infrastructure. In M. Jefferies & S. M. Rowlinson (Eds.), *New forms of procurement: PPP and relational contracting in the 21st century*. Retrieved from WorldCat: http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=1221211

Galt Å Outsource Helseopplysninger Om Halve Norge. (2017, September 7). *Fagforbundet*. Retrieved from www.fagforbundet.no: http://www.fagforbundet.no/?article_id=138319

Gjennomgang Av Anskaffelsesprosess Og Kontraktsoppfølging. (2017, April 25).. Retrieved from https://www.oslo.kommune.no/getfile.php/13213690/Innhold/Politikk%20og%20administrasjon/Politikk/Byr%C3%A5det/For%20pressen/Pressemeldinger/Gjennomgang%20av%20anskaffelsesprosess%20og%20kontraktsoppf%C3%B8lging%20-%20Renovasjonsetaten%20-%20rapport%20fra%20Deloitte%20-%2027042017.pdf

Greve, C. (2008). *Contracting for public services*. London; New York: Routledge. Retrieved from WorldCat: http://www.crcnetbase.com/isbn/9780415356541

Hadland, L. S. (2017, March 31). IT workers in india still have access to emergency network. *Norway Today.* Retrieved from norwaytoday.info: http://norwaytoday.info/finance/workers-india-still-access-emergency-network/

Hodge, G. (2004). Risks in public-private partnerships : Shifting, sharing, or shirking? *The Asia Pacific Journal of Public Administration, 26(2)*, 155-179.

Hodge, G. A., & Greve, C. (2009). PPPs: The passage of time permits a sober reflection. *Economic Affairs, 29(1)*, 33-39. Retrieved from Google Scholar.

Hodge, G. A., Greve, C., & Boardman, A. (2010). Introduction: The PPP phenomenon and its evaluation. In *International handbook on public–private partnerships*. Edward Elgar Publishing. Retrieved from Google Scholar.

Huxham, C., & Hibbert, P. (2008). Hit or myth? Stories of collaborative success. In J. O'Flynn & J. Wanna (Eds.), *Collaborative governance: A new era of public policy in australia?* Acton, A.C.T.: ANU E Press. Retrieved from WorldCat.

IKT-modernisering I Helse Sør-Øst. (n.d.). *Sykehuspartner*. [Web page]. Retrieved from sykehuspartner.no: https://sykehuspartner.no/nyheter/ikt-modernisering-i-helse-sor-ost

Indiske IT-arbeidere Har Fortsatt Tilgang Til Nødnettet. (2017, March 31). *Dagens Næringsliv*. Retrieved from www.dn.no: https://www.dn.no/nyheter/2017/03/31/0902/Broadnet/indiske-it-arbeidere-har-fortsatt-tilgang-til-nodnettet

Lavik, M., & Hellesnes, P. (2017, February 6). Står klare til å ta over. *Klassekampen*. no. Retrieved from www.klassekampen.no: http://www.klassekampen.no/article/20170204/ARTICLE/170209904

Link, A. N. (2006). *Public: Innovation strategies and policy alternatives*. Boston, MA: Springer US. Retrieved from WorldCat.

Macdonald, K. (2017). Private delivery of public services. Seminar 5, POLS90015, University of Melbourne.

Remen, A. C., & Tomter, L. (2017, May 3). Helse sør-øst: Innrømmer at utenlandske it-arbeidere har hatt tilgang til pasientjournaler. *NRK Norge*. Retrieved from www.nrk.no: https://www.nrk.no/norge/helse-sor-ost_-innrommer-at-utenlandske-it-arbeidere-har-hatt-tilgang-til-pasientjournaler-1.13478443

Remen, C. A., & Tomter, L. (2017a, May 5). Helse sør-øst vedgår mangelfull informasjon. *NRK Norge*. Retrieved from www.nrk.no: https://www.nrk.no/norge/helse-sor-ost-vedgar-mangelfull-informasjon-1.13501745

Savas, E. S. (2000). *Privatization and public–private partnerships*. Chatham House New York. Retrieved from Google Scholar.

Steets, J. (2010). *Accountability in public policy partnerships*. Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan. Retrieved from WorldCat: http://www.oapen.org/download?type=document&docid=392745

Taylor, G. (2017, March 16). Oslo: Veireno boss reported to police for employment violations. *Norway Today*. Retrieved from norwaytoday.info: http://norwaytoday.info/finance/oslo-veireno-boss-reported-police-employment-violations/

Tømmerås, O. (2015, November 17). Nykommer dundrer inn i avfallsmarkedet. *Fagbladet.no.* Retrieved from fagbladet.no: http://fagbladet.no/nykommer-dundrer-inn-i-avfallsmarkedet-6.91.311926.e731ffce3b

Tømmerås, O. (2016, October 3). Fra i dag hentes søpla i oslo billigere enn noen gang. *Fagbladet.no*. Retrieved from fagbladet.no: http://fagbladet.no/nyheter/fra-i-dag-hentes-sopla-i-oslo-billigere-enn-noen-gang-6.91.413552.801785001b

Vining, A. R., & Boardman, A. E. (2008). Public Private Partnerships: Eight rules for governments. *Public Works Management & Policy, 13(2)*, 149-161. Retrieved from WorldCat.