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Competition in Brazilian bus and coach services – The results of recent competitive tendering processes

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A B S T R A C T

This paper analyses the terms and the results of a sample of some recent Brazilian bidding processes for the concession of public passenger transport services: namely, urban and metropolitan bus or regional coach services. The analysis is based on selected issues relating to competitiveness and upon the legal framework that applies in this sector. It was concluded that, given the lack of bidding processes for concessions in the bus and coach sector in Brazil, the fact that some bidding processes have been carried out should be considered a sign of progress. However, these auctions have not necessarily prioritised competitiveness, since many barriers to entry into the systems were imposed by the bidding terms. Future competitive tendering processes should seek to abide by stricter principles of competitiveness, if they wish to avoid the entire effort expended on conducting such processes serving only to mask nothing more than formal obedience to the law and to discredit the bidding process in the eyes of Brazilian citizens.

1. Introduction

During Thredbo 10 a paper was presented containing the preliminary version of an auditing model applicable to the intercity bus service, with the potential to be used not only by the Brazilian Court of Public Accounts, but also by other institutions involved in this sector (Rolim, Brasileiro, & Aragão, 2007). On that occasion some parameters from this model were also applied to the regulations of three Brazilian States (Bahia, Rio de Janeiro and Santa Catarina), and to those for interstate transport in Brazil. Issues relating to competitiveness were singled out—in particular, barriers to entry, market access, the way in which the services are contracted, and the contractual periods involved.

This paper presents an analysis of the bidding terms and the results of some recent bidding processes involving the concession of urban bus and coach transport services – which are characterised in Brazil as public services – that have already been conducted according to the rules of the current Brazilian Constitution and related Federal Acts. The analysis was based on issues relating to competitiveness, taking into account not only some of the parameters recommended in the model cited above, but also regulations included in current Brazilian legislation, and applied some of the principles of the proposed auditing model.

Recently, Gwilliam (2008a) examined how regulatory reform has been undertaken in the bus transport industry in the last two decades in developing and transitional economies as well as in industrialised countries. Professor Gwilliam's overall conclusions emphasise the positive results potentially achieved by regulatory regimes based on competitively tendered franchises although he recognises that we are facing the emergence of a regulatory cycle in the field of bus transport. Gwilliam (2008b) also remarks that increasing concerns about service quality may be giving rise to proposals related to negotiated performance-based contracts (Hensher & Stanley, 2008; Yvrande-Billon, 2006, chap. 28). But, as van de Velde, Veeneman, and Schipholt (2008) pointed out in respect to the case of The Netherlands, competitive tendering has generally obtained positive results in public transport.

Of course, in some situations it is possible that competitive tendering may not be an interesting option. Stanley and van de Velde (2008) have reported those conditions where some kind of re-negotiated contracts with previous incumbent may be a better option for the regulators than re-tendering. The main points taken in account in the report were brought to light by Myers and Ashmore (2007) and Wallis and Bray (2007): in general these points may be linked to the interest in renewing contracts once

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awarded in competitive tendering processes by efficient and well-performing operators.

On the other side, Mathisen and Solvoll (2008) analyses how the intensive use of competitive tendering in the Norwegian bus industry could change the industry structure to a higher level of concentration. The new industry structure, more prone to collusive behaviour, may be incompatible with the goals of maintaining effective competition in the search for productivity gains and efficiency achieving. However, Odeck (2008) shows that merger in the Norwegian bus industry has not been in conflict with technical innovations or productivity improvements transferable to bidder's proposals or service quality.

Finally, Amaral, Saussier, and Yvrande-Billon (2009) compare the London and the French model for regulating urban public transport. They conclude that London type of tendering process may explain the better results achieved as size and transparency of auctioning is associated with fostering competition and preventing anticompetitive behaviour.

In Brazilian case, local bus and coach industries are structurally concentrated and this is due to a development process based in "negotiated re-contracting" under regulatory capture (Santos, Barboza, & Orrico Filho, 2005). In this picture, recent bidding processes in the field of Brazilian urban bus or regional coach shall be signs of a new regulatory cycle founded in competitively tendered franchises. So, as Gwilliam (2008b) states, it is time to learn with the events in order to be better prepared to future challenges.

The bidding processes considered here refer to the systems listed in Table 1.

This paper is divided into: a) a description of the purpose of the bidding processes; b) the legal framework underlying the provision of such services; c) the parameters relating to competitiveness employed in the analysis; d) analysis of the bidding processes; and e) conclusions.

2. Objectives of the bidding processes

This section describes the goals of the bidding processes analysed in this paper, as laid out in Table 2, which provides detailed information on the bidding processes listed in Table 1, and sums up this section. Most of the information presented in Table 2 was obtained from the bidding terms and their annexes. Additional information from other sources is cited where available.

3. Legal framework

Brazil has a long tradition of considering its urban bus and coach systems as a public service. The current Constitution of 1988 (CF/1988) established in its Article 175 that all public services should be provided by public bodies or be transferred to private companies. In the latter case the transfer must be preceded by a public bidding process of a competitive kind, which should result in a contract. Such contracts are governed by Federal Law 8987/1995, with subsidiary application of Federal Law 8666/1993. Currently, most services are provided by private companies on behalf of the government of a municipality or State or the Federal Government, which retains ownership of the services.

Nevertheless, most of the existing contracts are not the result of public tenders, and the right to operate systems has been automatically renewed, without being submitted to tests of the actual market. Thus, competition for the market has been the exception rather than the rule. To complete this picture, it should be added that many existing concessions have been operating under contracts that have already expired or that are to expire shortly and a recent law (Federal Law 11,445/2007, which has not yet come into effect) has imposed a deadline for the completion of bids as a way of settling such cases. It is thus expected that numerous bidding processes will occur in the sector in the near future.

Nevertheless, some authorities at local and regional level, instead of extending expired contracts, have already implemented bidding processes, and one national authority (the ANTT – National Land Transportation Agency) has already started proceedings, albeit belatedly, for conducting public hearings in preparation for future bids. We should therefore discuss the results of these procedures so as to draw lessons and avoid any bad practices in ensuing bidding processes, especially so far as competitiveness concerned.

4. Parameters relating to competitiveness

The aspects of the bidding processes that will be addressed in this paper are listed below and, as mentioned, these are all related to competitiveness. Clearly we do not intend to cover every aspect of competitiveness, but merely discuss some especially pertinent

Table 1
Bidding processes analysed in this paper.

Bidding Process	Level	Object of the contract	Estimated contractual value (USD)
131/2008	Municipal	Urban transport of the City of Belo Horizonte/MG	1st Network: 2,505,083,672.65 2nd Network: 2,780,883,631.09 3rd Network: 2,504,211,427.92 4th Network: 1,644,357,532.65 Figures as of 26 March 2008, for a contract period of 20 years
03/2008	Metropolitan	Intercity transport, of an urban character, in Greater Rio de Janeiro	211,463,041.28 (as of 1 September 2008), for a contract period of 15 years
01/2005	Metropolitan	Intercity transport, of an urban character, in Greater São Paulo (RMSP)–1st Area	618,647,812.64 (as of 7 October 2005), for a contract period of 10 years
02/2005	Metropolitan	Intercity transport, of an urban character, in Greater São Paulo (RMSP) –2nd Area	1,060,539,107.38 (as of 7 October 2005), for a contract period of 10 years
03/2005	Metropolitan	Intercity transport, of an urban character, in Greater São Paulo (RMSP) –3rd Area	707,026,071.59 (as of 7 October 2005), for a contract period of 10 years
04/2005	Metropolitan	Intercity transport, of an urban character, in Greater São Paulo (RMSP) –4th Area	486,080,424.22 (as of 7 October 2005), for a contract period of 10 years
06/2006	Municipal	Urban transport in the City of São Paulo/SP – Eastern Zone (or 4th Area)	802,055,519.17 (as of 28 August 2007), for a contract period of 10 years
02/2007	Urban and regional	Urban and intercity transport, of an urban character, in the Federal District	135,560,320.51 (33,890,080.13 per lot). Figures as of 2 January 2008, for a contract period of 7 years

Note: the exchange rates from Real (BRBY) to US Dollar (USD) were consulted at http://www4.bcb.gov.br/?TXCONVERSAO, taking the publishing date of the bidding terms as the point of reference. However, figures may vary over time according to fluctuations in the exchange rate.

Table 2
Objectives of the bidding processes.

Bidding process	Body granting contract	Responsibility of body	Routes covered by contract	Estimated passengers using routes
131/2008	The City of Belo Horizonte's Department of Town Planning, through The Transportation and Transit Authority (BHTrans) (a public company controlled by the Municipality of Belo Horizonte)	The conventional urban bus system of Belo Horizonte City (comprising 323 routes)	The local transport network of Belo HorizonteCity, comprising 4 networks: 1st Network: Venda Nova/Pampulha; 2nd Network: North/Northeast/East; 3rd Network: Barreiro/West; 4th Network: Northwest/common operation area (Centre-South).	36 million passengers per month (BHTrans, 2009)
03/2008	The Road Transportation Department (DETRO), a public authority linked to The Rio de Janeiro State Transportation Department	The intercity bus and coach transport system of the State of Rio de Janeiro (comprising 1083 routes)	Route 405T, from Nova Iguaçu, in Baixada Fluminense to Barra da Tijuca, in the western area of the City of Rio de Janeiro	390,000 passengers per month (DETRO, 2009)
01/2005; 02/2005; 03/2005; 04/2005	The Metropolitan Urban Transportation Authority (EMTU), a public company linked to the State of São Paulo's Department of Metropolitan Transportation (STM) and controlled by the State Government of São Paulo	The intercity low- and medium-capacity transportation systems using bus and other vehicles in the three Metropolitan Regions of The State of São Paulo: the Metropoitan Region of São Paulo - RMSP (comprising 650 routes); Metropolitan Region of Baixada Santista – RMBS (comprising 59 routes); Metropolitan Region of Campinas – RMC (comprising 200 routes) (STM, 2009). For the purposes of intercity transportation, the Metropolitan Region of São Paulo is divided into 5 areas, in addition to the City of São Paulo.	Bid 01/2005: routes that link the municipalities of Cotia, Embu, Embu Guaçú, Itapecerica da Serra, Juquitiba, São Lourenço da Serra, Taboão da Serra, Vargem Grande Paulista and São Paulo - RMSP (1st Area); Bid 02/2005: routes that link the municipalities of Barueri, Cajamar, Caieiras, Carapicuíba, Francisco Morato, Franco da Rocha, Itapevi, Jandira, Osasco, Pirapora do Bom Jesus, Santana de Parnaíba and São Paulo - RMSP (2nd Area); Bid 03/2005: routes that link the municipalities of Arujá, Guarulhos, Mairiporã, Santa Isabel and São Paulo - RMSP (3rd Area); Bid 04/2005: routes that link the municipalities of Biritiba Mirim, Ferraz de Vasconcelos, Guararema, Itaquaquecetuba, Mogi das Cruzes, Poá, Salesópolis, Suzano and São Paulo - RMSP (4th Area)	20 million passengers per month (EMTU, 2009)
06/2006	The City of São Paulo's Department of Transportation	The conventional urban bus system of the City of São Paulo (comprising 1300 routes, divided into 8 areas, in addition to the city centre - a common area)	Routes in the East Zone (or 4th Area) of the City of São Paulo City, comprising the Sub-Prefectures of Araçanduva, Itaquera, Guaianases (in part), Cidade Tiradentes and São Mateus (4th Area Structural Subsystem)	8 million passengers per month
02/2007	The Federal District's Department of Transportation	The conventional bus transport system of the Federal District (comprising 824 routes)	Routes spread throughout the current system, which comprises the whole Federal District	930,000 passengers per month

Notes: a) the network in bid 131/2008 was divided into four regions, so that a company that was successful in one area could not be contracted to serve another area; b) bid 03/2008 is the last of the bids for the concession of nine routes linking the cities of Baixada Fluminense to Barra da Tijuca; c) bid 02/2007 was carried out in order to hire a fleet of 160 vehicles, divided into 4 lots of 40 vehicles each, to strengthen the current fleet of 2337 vehicles (a competitor could win more than one lot).

issues. It should also be pointed out that restrictions on competitiveness go on to negatively impact the cost of the contracts resulting from the bidding processes.

- Bidding type;
- Fare setting method;
- Technical-professional qualification;
- Technical-operational qualification;
- Number of bidders;
- Eligibility to bid of consortia and individual companies;
- Contractual period.

5. Analysis of the bidding processes

This section discusses the bidding processes in the light of the parameters mentioned in the previous section.

5.1. Bidding type and fare setting method

The bidding type is a feature of the bidding terms which refers to the criterion for deciding who will be chosen as the winner of the bid. In this paper, the "lowest fare" bidding type, in which the contract is made with the bidder who proposes to perform the services by charging a lower rate to the user, is considered to be the bidding type that best favours competitiveness. However, Brazilian legislation (Federal Law 8987/1995) allows other types of criteria to be employed in the bidding terms. These may include: the highest offer received for the concession; the best technical proposal, with fares fixed in the bidding terms; the best technical proposal alone; or other combinations of these. Despite this, it is assumed here that other criteria such as these restrict the competitiveness of the concession of contracts for provision of bus and coach transport services.

This paper considers fare setting to favour competitiveness when maximum allowable fares are established in the bidding terms, so that the bidders have scope to attract a greater proportion of users with their offer and their pricing policy throughout the implementation of services (Rolim, 2007). Fare setting is intrinsically linked to the adopted bidding type, since the "lowest fare" is the only bidding type in which the competitor is declared the winner for having proposed the lowest fare to the user.

Table 3 shows the bidding types used in bidding processes analysed in this paper. As the bidding type directly affects the fare setting method, these two parameters will be addressed together.

Table 3 shows that none of the bidding processes analysed contain criteria that favour competition, except the 03/2008 DETRO bidding process. In none of the other cases was the fare a deciding factor in choosing the winning bidder.

Table 3
Bidding types.

Bidding Process	Body	Bidding type	Minimum acceptable offer for concession (USD)	Procedure for payment for concession
131/2008	The City of Belo Horizonte's Department of Town Planning	The best technical proposal combined with the highest offer received	1st Region: 19,178,067.00 2nd Region: 55,385,819.48 3rd Region: 14,730,930.87 4th Region: 40,255,593.62	10 semi-annual instalments
03/2008	DETRO	The highest offer received combined with the lowest fare	2,643,288.02	50% on signing the contract, and 50% in 24 monthly instalments
01/2005; 02/2005; 03/2005; 04/2005	EMTU	The highest offer received	Not specified in the bidding terms (all bids)	Paid throughout the period of provision of service as a percentage of revenue (all bids)
06/2006	The City of São Paulo's Department of Transportation	The lowest cost per passenger (to be paid by the government to the winning bidder)	Not applicable	Not applicable
02/2007	The Federal District's Department of Transportation	The highest offer received	1,354,248.96 (338,562.24 per lot)	To be paid before signing the contract

Note: the exchange rates from Real (BRBY) to American Dollar (USD) were taken from http://www4.bcb.gov.br/?TXCONVERSAO, as of the date of publication of the bidding terms.

Using the highest offer received as a criterion restricts competition in so far as it favours companies with greater available financial resources to pay for the right to provide the services. This is evident not only from the sum stipulated as the minimum acceptable offer, but also the procedure used to receive payment for the concession, as shown in Table 3. The only exceptions were the bidding processes run by the EMTU and the Municipality of São Paulo. The former, in addition to not establishing a minimum offer, stipulate that payments would be effected in the course of provision of the service. The latter did not adopt the highest offer received as a criterion.

The bidding terms which adopt criterion of the best technical proposal usually contain subjective elements that undermine objectivity in selecting the best proposal.

In short, in almost every bidding process, the criterion of the lowest fare, which lays emphasis on the benefits to the users, was not adopted.

This brings us to the issue of the fare setting method. Since, in the most of the bidding processes, the maximum acceptable fare was not established in the bidding terms, competitiveness was undermined and the interests of the users jeopardised.

In most cases, it is the public authority which sets the fares and two alternatives are left to the bidder: either pay for the concession or formally develop a technical proposal that will convince the bidding commission that this bidder offers the more advantageous conditions for the public authority.

One of the cited exceptions was DETRO Bidding Process 03/2008, which involved a combination of highest offer received and lowest fare. Although the use of the highest offer as a criterion restricted competitiveness, the fare was nevertheless considered in establishing the winning bidder. However, the bidding terms undermined competitiveness by setting a minimum fare, and bidders were eliminated from the competition if they breached this rule.

The other exception was Municipality of São Paulo Bidding Process 06/2006. Although this bidding process used a criterion not mentioned in the legislation, its effect was similar to the one obtained by adopting the lowest fare bidding type, thus favouring competitiveness.

5.2. Technical-professional qualifications and technical-operational qualifications

Possessing the necessary technical-professional qualifications is a requirement allowed by Federal Law 8666/1993, which aims to establish whether the bidder has a professional with previous experience of performing similar services to the ones being put out to tender (Barreto & Pinheiro, 2004). This involves the presentation of technical certificates, on behalf of the professional, proving prior development of similar services, this requirement being limited to the most important and valuable parts of the object of the contract. Requirements involving minimum quantity or deadlines are not allowed. We believe that, if implemented as outlined above, this requirement does not place restrictions on competitiveness.

The possession of technical-operational qualifications is a requirement that ensures that the bidder is operationally capable of implementing the future contract (Meirelles, 2004). We argue that such a requirement, when it involves the provision of technical certificates in the name of the bidder, or, better still, proof of having provided a minimum number of such services in the past, unduly restricts competition. It is understood that such a requirement, besides giving preference to larger companies over smaller ones, does not effectively prove operational capacity, because these certificates do not necessarily guarantee that the bidders have the conditions to honour the contract. In other words, services performed in the past do not necessarily provide the material and operational conditions for the implementation of a future contract by a bidder. Instead, this qualification could be met by the fulfilment of operational requirements previously established in the bidding terms, by way of a declaration of compliance. This point of view has been put forward by Rolim and Santos (2009). However, although ruled out in the final wording of Federal Law 8666/1993, current legal opinion and jurisprudence do contain examples of proof of technical-operational qualifications in the form of the appropriate certificates being required.

Table 4 outlines requirements regarding technical-professional and technical-operational qualifications discussed in this paper.

Table 4 shows that, with the exception of Bid 02/2007 from The Federal District's Department of Transportation, every bidding process imposed barriers to entry by way of technical and operational requirements that restricted competition.

5.3. Number of bidders

This criterion does not in itself indicate whether a bidding process provided an appropriate level of competition. However, a small number of competitors may suggest a lack of competition. If this factor is taken into account, it could be argued that, in terms of competitiveness, only the bidding process carried out by The Federal District's Department of Transportation may have been successful.

Table 4
Technical qualifications.

Bidding Process	Body	Technical-professional	Technical-operational
131/2008	The City of Belo Horizonte's Department of Town Planning	Required, but not in compliance with legislation and including barriers to entry, as it stipulates a minimum number of previously provided services (operation of 100 vehicles per day)	Required, but in an inadequate way and with barriers to entry, because: a) it requires the presentation of a certificate of past performance, on behalf of the bidder, showing the provision of urban bus services; b) it stipulates a minimum number of previously provided services (operation of 100 vehicles per day)
03/2008	DETRO	Not required	Required, but in an inadequate way and with barriers to entry, because: a) it requires the presentation of a certificate of past performance, on behalf of the bidder, demonstrating experience in the provision of coach services; b) it requires that the bidder either own vehicles, or provide documentary evidence that it can afford to buy, rent or lease at least 50% of the fleet; c) it requires that the bidder have hired a staff of at least five drivers prior to the bid
01/2005; 02/2005; 03/2005; 04/2005	EMTU	Not required	Required, but in an inadequate way and with barriers to entry, because: a) it requires the presentation of a certificate of past performance, on behalf of the bidder, demonstrating experience in the provision of urban bus services; b) it stipulates a minimum number of previously provided services, as follows: Bid 01/2005: 4000 buses per month; Bid 02/2005: 6000 buses per month; Bid 03/2005: 4000 buses per month; Bid 04/2005: 2100 buses per month; c) it requires that the bidder either own vehicles and garages, or provide documentary evidence that it can afford to buy, rent or lease them
06/2006	The City of São Paulo's Department of Transportation	Required, in compliance with legislation	Required, but in an inadequate way and with barriers to entry, because: a) it requires the presentation of a certificate of past performance, on behalf of the bidder, demonstrating experience in the provision of urban bus services; b) it stipulates a minimum number of previously provided services (operation of 18,000 vehicles per month)
02/007	The Federal District's Department of Transportation	Required, in compliance with legislation	Required, according to the criterion established in this paper as a good practice (through a declaration of compliance with the fulfilment of operational requirements previously established in the bidding terms)

Table 5 shows the number of bidders participating in the bidding processes under study.

5.4. The participation of consortia and single companies

In this paper it is assumed that there are both pros and cons regarding allowing consortia to participate, depending on the complexity of the contract. In case of acceptance, there must be limits, in view of the risk of the bidding terms threatening the economy of the contracts, restricting competition for routes and indirectly facilitating collusion between the parties, in such a way that every potential bidder would receive a portion of the services being put out to tender.

This is such a sensitive issue that the Brazilian anti-trust legislation (Federal Law 8884/1994) is particularly concerned about it. Article 54 of the Act provides that any action taken to concentrate economic wealth, including the forming of any kind of group of corporations, involving the participation of an individual company

Table 5
Number of bidders per bidding process.

Bidding Process	Body	Number of bidders	Number of winners
131/2008	The City of Belo Horizonte's Department of Town Planning	1 consortium per region 2nd Region: 2 consortia 3rd Region: 2 consortia 4th Region: 1 consortium and 1 single company	1 consortium per region
03/2008	DETRO	Information not obtained	2 separate companies
01/2005;02/2005; 03/2005; 04/2005	EMTU	Bid 01/2005: 1 consortium, comprising 6 individual companies Bid 02/2005:1 consortium, comprising 8 individual companies Bid 03/2005:1 consortium, comprising 11 individual companies Bid 04/2005:2 consortia (comprising 3 and 5 individual companies) and 1 single company	Bid 01/2005: 1 consortium, comprising 6 individual companies Bid 02/2005:1 consortium, comprising 8 individual companies Bid 03/2005:1 consortium, comprising 11 individual companies Bid 04/2005:1 consortium, comprising 3 individual companies
06/2006	The City of São Paulo's Department of Transportation	1 consortium, comprising 3 individual companies	1 consortium, comprising 3 individual companies
02/2007	The Federal District's Department of Transportation	13 individual companies and 9 cooperatives	3 cooperatives

Note: In Bid 131/2008 the number of individual companies in the consortia was not obtained.

Table 6
Consortia and single companies.

Bidding Process	Body	Consortia	Single companies
131/2008	The City of Belo Horizonte's Town Planning Department	Yes, but could only win one disputed area	No
03/2008	DETRO	No	No
01/2005; 02/2005; 03/2005; 04/2005	EMTU	Yes (all bids)	No (all bids)
06/2006	The City of São Paulo's Department of Transportation	Yes	No
02/2007	The Federal District's Department of Transportation	No	No

or group of companies resulting in 20% or more of a significant market, must be controlled by the anti-trust body responsible.

Allowing the participation of single companies would thus seem to act in favour of competition.

Table 6 shows how the bidding processes under study dealt with this issue.

In Bid 131/2008 in the City of Belo Horizonte, the participation of consortia was allowed, but there was no limitation on the number of participants per consortium. Moreover, the bidding terms did forbid a single competitor from winning more than one lot. These terms are considered harmful to competition as they may facilitate collusion between the interested parties.

In the bid held by the DETRO the ban on the participation of consortia can be seen to have been beneficial, since the object of the dispute was a single route and the terms stipulated that two bidders would be hired. This is a good practice, because it stimulates competition on the route.

At the auctions held by the EMTU and by the Municipality of São Paulo, although consortia were allowed to participate, competitiveness was undermined. The relatively large size of the areas covered by the tendering process and the failure to restrict the number of companies per consortium may have facilitated collusion between the interested parties.

Likewise, the ban on the participation of consortia imposed by the Federal District's Department of Transportation may not have favoured competition, since the object of the auctions was divided into four lots and a single bidder could be hired all four. This rule may have given preference to larger companies over smaller ones, in a process from which consortia have been banned. However, Bid 02/2007 was peculiar in one respect, in comparison with the other auctions studied, in that it allowed the participation of cooperatives. Cooperatives differ from consortia because the latter comprise a group of companies whilst the former comprise a group of individuals. Competition would thus appear to be encouraged in cases where cooperatives are allowed to participate. However, the bidding terms did not limit the maximum number of individuals allowed to join together into a cooperative. For this reason and also because a single bidder could win more than one lot, we conclude that competition was also restricted in this case.

Table 7
Contractual periods.

Bidding Process	Body	Contractual period	Possibility of extension
131/2008	The City of Belo Horizonte's Department of Town Planning	20 years	no
03/2008	DETRO	15 years	Yes (+15 years)
01/2005; 02/2005; 03/2005; 04/2005	EMTU	10 years (all bids)	no (all bids)
06/2006	The City of São Paulo's Department of Transportation	10 years	Yes (+5 years)
02/2007	The Federal District's Department of Transportation	7 years	Yes (+7 years)

5.5. Contractual period

In this paper we consider short intervals between bidding cycles to be a criterion that favours competition. The contractual period should be long enough to allow a contracted entrepreneur to recover his investment and short enough to allow the competition for the market (a competitive tendering process) to take place again (Alexandersson, Hultén, & Fölster, 1997; Smith, 2003). The ideal period should be around 5 years (European Commission, 2001) and may take as long as seven years, when extensions subject to performance are taken into consideration (Rolim, 2007).

Table 7 shows the contractual periods for the bidding processes under study.

Table 7 clearly shows that the periods of the contract for these bids are longer than the maximum duration considered to favour competition. The possibility of extending the contract further exacerbates the situation. Although this does not go against the letter of the law, the bidding terms studied merit criticism and will result in the perpetuation of the undesirable pre-existing system.

6. Conclusions

Given the paucity of competitive tendering processes in the bus transport sector in Brazil, the number of bids listed in Table 1 may be considered a sign of progress, especially when one considers that in some cases, such as Bid 03/2008 from the DETRO, the public authority responsible for the concession had to overcome various legal obstacles and resistance from third parties to the implementation of the bids. However, these bidding processes did not necessarily favour competition, since many barriers to entry were imposed by the bidding terms, as shown in the previous sections.

Despite the fact that the use of competitive tendering processes in every situation has been the subject of some criticism and scepticism and alternative methods have been discussed (Hensher & Wallis, 2006), the sector in Brazil is still at too preliminary a stage for this criticism to be valid, compared with other countries where major transport reforms have already been put in place. In Brazil, the initial rounds of competitive tendering, on a broader level, have yet to be initiated, and this seems to be the most difficult task to be faced. It should be remembered that as the sector has traditionally been run by private enterprises, without public subsidies, there is an urgent need for these companies to be exposed to competition. Moreover, the stage when the public bidding terms are specified would provide the best opportunity for establishing the performance indicators to be complied with by the future operators. It should be remembered that, given the current constitutional framework, other ways of conceding such contracts, such as the use of negotiated performance-based contracts, would require major constitutional reforms.

In addition to the need to conduct more competitive tendering processes in Brazil, there is therefore also an urgent need, not only to abide by the regulations laid out in the Brazilian constitution, but also to ensure that the end-users of the services benefit from the process. Future bidding processes should seek to employ principles that encourage competition, since, if they do not, the whole process may only have served to mask nothing more than formal compliance with the law and discredit the bidding process in the eyes of Brazilian citizens.

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