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OBRA TRANSPARENTE

Proinfância or Childhood problems? Challenges to constructing nurseries and schools in Brazilian municipalities

Support

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Proinfância or childhood problems?[1] Challenges to constructing nurseries and schools in Brazilian municipalities

[1]Translator's note: In Portuguese, the title is a word play on the name of the program Proinfância, but here as a junction of the words "problem" and "childhood" ("Proinfância ou Problema na Infância?").

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Transparência Brasil is a non-profit organization with the objective of promoting transparency and social monitoring over government, contributing to the integrity and improvement of public institutions, public policies and the democratic process.

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SUMMARY

Introduction

CONSTRUCTION OF NURSERIES AND SCHOOLS SHOWS SYSTEMIC PROBLEMS FROM PLANNING TO DELIVERY

June 2019

The Obra Transparente [Transparent Public Works] project is being implemented by Transparência Brasil since May 2017 in partnership with Observatório Social do Brasil (OSB) and with local "social observatories"[2] acting in 21 municipalities in south and southeast regions in Brazil. The initiative ends in June 2019.

In its original proposal, the project aimed especially at strengthening the social monitoring of public works by social observatories through the following measures:

1) **Training in public works monitoring;**

2) **Providing social observatories with technical assistance;**

3) **Sharing of experiences and good practices.**

Alongside these actions, the project also offered support to social observatories in order to follow up 135 construction projects of the National Program for the Restructuring and Acquisition of Equipment for the Public Early Education School Network, known as Proinfância [Prochildhood], in the selected municipalities. The program was introduced in 2007 by the Federal Government of Brazil and is conducted by the National Fund for Educational Development (FNDE). It offers technical and financial support to municipalities for the construction of educational infrastructure.

As a consequence, we were able to collect relevant qualitative evidence on program implementation at the local level, as well as on the obstacles that keep the program from meeting its goals. We present in this report the results of the two-year Obra Transparente project, highlighting the findings from our systematic public works monitoring.

An overview of monitored construction works reveals that, in assessed municipalities, Proinfância is largely ineffective, with less than

[2]Translator's note: These "social observatories" (observatórios sociais, in Portuguese) function as local watchdogs that monitor the municipal administration in each city. OSB functions as an umbrella organization that coordinates a network of all social observatories.

one in every five planned construction projects being finished during the monitoring period.

Another aspect of the disappointing results is the large share of cancelled construction projects: 40% of public works we followed up will not be delivered. Proinfância construction projects are generally delivered with a delay of a few months at best, and at worst projects are started and then abandoned for many years, without any perspective of continuance, wasting away public money.

The qualitative evidence obtained from our monitoring shows that these results are explained through a series of flaws throughout Proinfância implementation. Each of the main problems we identified is described and illustrated in detail in the following pages with examples from the selected municipalities, but here in **Graph 1** we present a short summary of the barriers to implementation in each of its main stages:

Graph 1. Identified barriers to implementation of each Proinfância stage:

These findings show that the problems identified by our monitoring are not limited or restricted to any specific stage, but are rather systemic, covering every relevant stage of implementation. It is worth noticing that the flaws we verified were related to the scope of action of both federal and local governments. Therefore, these results highlight the urgent need to reform the program, which should take into account every stakeholder.

OVERVIEW OF MONITORED CONSTRUCTION WORKS

In a previous report published in September 2018[1], preliminary results from Obra Transparente already pointed out that Proinfância was ineffective in 21 analyzed municipalities, based on information obtained from each local administration and from monitoring work conducted by our partner social observatories. Data from three different surveys held at that time already indicated that less than 10% of 135 monitored construction works had been finished, and almost half had still not started and were either pending or had been cancelled.

For this final report, we collected new data with the 21 local administrations to have up-to-date information on the situation of monitored construction works. Between February and March 2019, we sent new standardized freedom of information requests, partially reproducing requests that had been sent out in February 2018, in which the following information was asked:

1. Current situation of the construction work;
2. Start date (based on the first start order of the first contract);
3. Percentage of completion;
4. Date of last progress report;
5. Scheduled due date;
6. For concluded works: date of delivery;
7. For works not started yet, is the work scheduled to be executed, in accordance with the 2019 annual budget law?

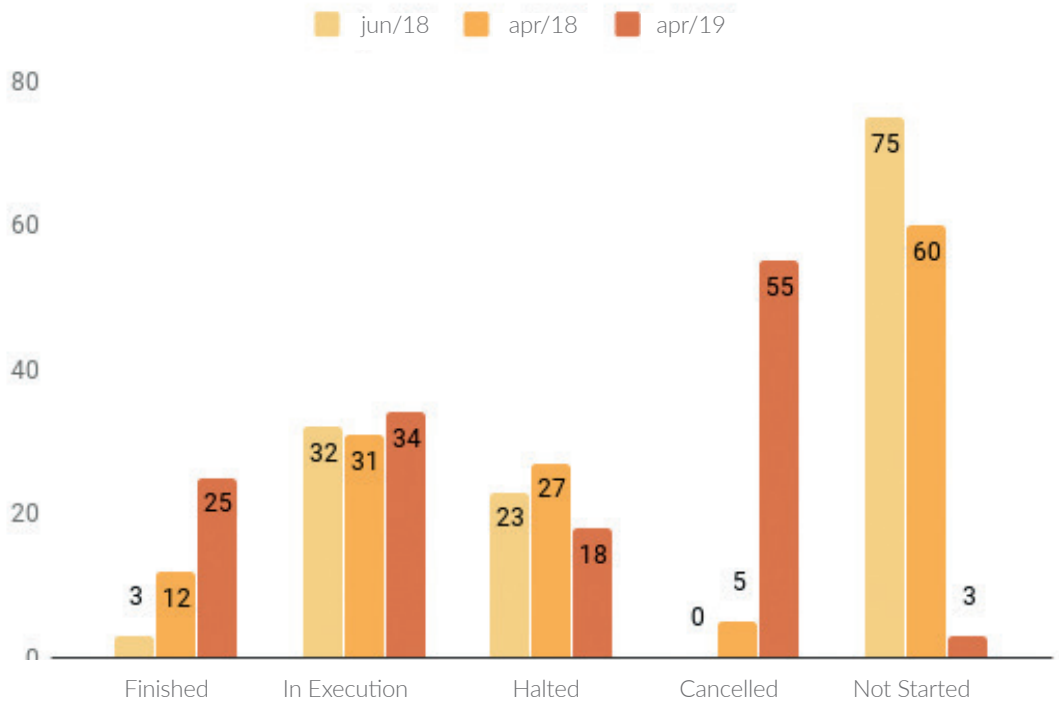
Alongside it, Transparência Brasil sent to each local administration a second request, asking for information regarding all contracts already awarded for execution related to the same construction works[2].

After this new survey, our first finding was, as with previous experiences, the still poor implementation of Freedom of Information Law (FOIL) in the monitored municipalities. In some cases, there were even obstacles for sending out requests. Of the 42 requests we sent out, only 19% were responded at first. Even after going through two stages of appeal in the case of requests without response, only partially responded to or denied, the satisfactory rate of response was only 43%, while 23% of requests remained without response[3].

Based on information obtained from the local administrations and, in cases of either no response or inaccurate response, on additional information provided by local social observatories, we compiled the following overview of construction works that were monitored during Obra Transparente from June 2017 to April 2019:

1. https://www.transparencia.org.br/downloads/publicacoes/18082018_relatorioOT.pdf
2. The complete texts used as basis for both requests are included in Annex I.

Graph 2. Comparison of the situation of construction works during the monitoring period (June 2017 to April 2019):



Source: Data obtained from consulted municipalities and partner social observatories. Produced by Transparência Brasil. In June 2017 data was assessed for 133 of 135 public works.

The evidence shows the low effectiveness of the program, with less than one in every five originally planned construction works being in fact delivered during the observed period. It is worth noticing that FNDE's standard schedule for these construction projects foresees an average execution time frame of 9 up to 12 months. In comparison to data assessed by local observatories in June 2017, 3 out of 25 works were already finished; regarding the other 22 that were in fact delivered after our monitoring began, 20 had already started at that point. The remaining 2 were started and delivered during our monitoring, but also with delays in relation to their planned schedule. We also found that almost half of works that were finished - 12 out of 25 - were halted due to early termination of contract and needed to go through one or several new contract procedures to be completed.

Of the 34 works that were still in progress up until April, 14 were already under construction at the beginning of our monitoring. Of these, half was halted along the period. The slow pace of some construction works caught our attention. In Campo Mourão, in the state of Paraná (PR), the nursery school in the Jardim

3. A more detailed analysis of FOIL compliance in municipalities can be seen in the report "Diagnosis of the effectiveness of FOIL requests at the local level and its impact on social monitoring", (https://www.transparencia.org.br/blog/ wp-content/uploads/2019/05/Diagnostico_TdP_OT_LAI_2019.pdf), published in May 2019.

Flora neighborhood advanced only 25% in its percentage of completion during the almost two years of monitoring. A worse case is the Municipal Pre-primary School (EMEI) Parque dos Eucaliptos in the city of Gravataí, in the state of Rio Grande do Sul (RS), that had already reached 93% of completion in June 2017 and, almost two years later, remained unfinished.

We observed some progress among works that were halted. Of the 23 works in this situation at the beginning of our monitoring, 7 have already been finished and 5 resumed construction. Even so, the other 11 projects, almost half of the total, are examples of the disheartening perspective that afflicts abandoned works throughout Brazil: they had already been halted at the start of our monitoring and remained unchanged. Almost of all of them represent a portrait of the failed implementation of public nursery schools with so-called innovative methodologies of execution, following a policy adopted by the FNDE in 2012 that was scrapped after the massive abandonment of construction works by the selected contractors. It is also worth noticing the sad outcome to the largest share of construction works, which in June 2017 had still not started. By the end of 2018, FNDE determined the cancellation of works that had yet not been awarded, meaning that the amount of cancelled works, which will no longer be implemented, has risen from zero to 55 over the period of our monitoring.

Therefore, this outcome also points to another aspect of the program's failure in analyzed municipalities: 40% of planned construction works will end up not being executed. To cover the demand for nurseries and pre-primary schools, the FNDE has started a new cycle of project submission by municipalities, so local administrations can submit proposals for new funding grants, starting the process anew.

Overall we observe that Proinfância construction works are delivered with a delay of a few months at best, and at worst projects are started and then abandoned for many years, without any perspective of resuming work, wasting away public money.

Participants of the Obra Transparente project inspect the Parque dos Eucaliptos pre-primary school in Gravataí (RS) in November 2017.

PROINFÂNCIA IN PRACTICE: A SEQUENCE OF FLAWS

As pointed out earlier, many surveys conducted by Transparência Brasil on monitored construction works in the scope of the Obra Transparente project illustrate the weak results of Proinfância's goals to increase access to early education in Brazil. At the national level, data analysis from the parallel project Tá de Pé [Is it standing?] confirms this diagnosis: only 43% of nurseries and pre-primary schools registered on SIMEC were finished until May 2019, according to information obtained from State and local governments[4].

An extensive program evaluation at the federal level was published in May 2018 by the Brazilian Federal Comptroller's Office (CGU), which also stated that, among 8,800 planned construction projects, only 39% had been finished[5]. Not only were delivery numbers low, the report also highlighted the existence of an even more relevant obstacle for accomplishing the program's goals: less than half of all delivered projects - 16% of all the originally planned projects - were in fact in operation, according to information from the Ministry of Education (MEC)[6]. In other words, the effective return of public investment to society was well below expected.

By continuously following up on the implementation of 135 Proinfância construction works at a local level and over a two-year period, the Obra Transparente project was able to collect qualitative evidence that helps better clarify several obstacles faced by the program. In our previous report, published in September 2018, we already discussed some of these problems, such as frequently halted projects and delays in execution, including specific examples of their possible causes, such as: flaws in contracting procedures and contract supervision by local administrations, or delays in the transfer of federal funds.

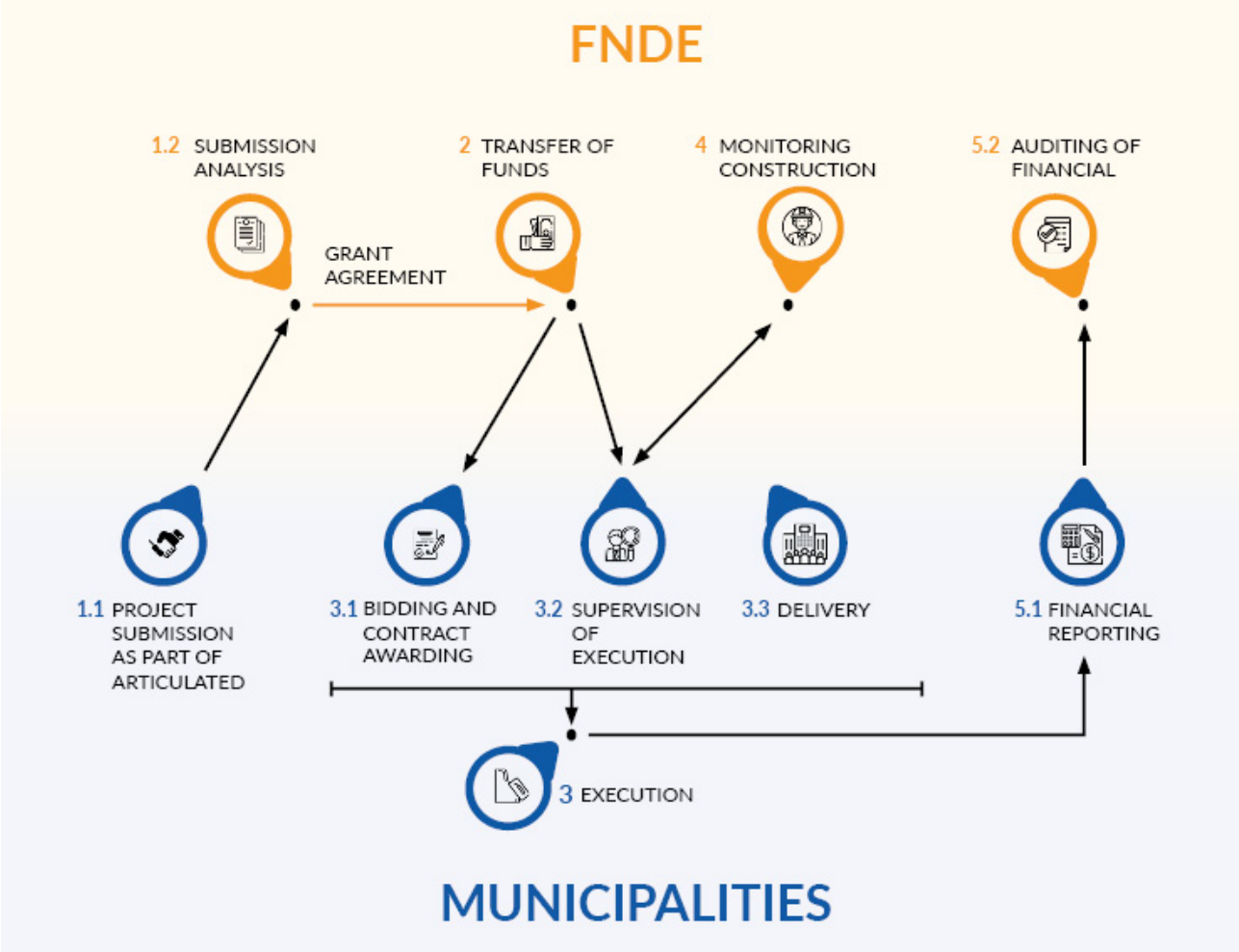
In order to present a broader view of the observed barriers to implementation, we have gathered in this report the qualitative evidence from our monitoring. We intend to contribute to a deeper diagnosis of the existing challenges to Proinfância implementation specifically, giving examples of situations that can also negatively impact the decentralized implementation of other public policies.

4. In order to determine whether the work was finished, we used information on the status of inspection available on SIMEC. The sample analyzed by Tá de Pé project is bigger than the projects covered by Proinfância, involving 15.142 public construction works of nurseries and pre-primary schools funded by the FNDE in states and municipalities. In the database it is not possible to distinguish precisely which construction work is connected to which specific program.
5. Report on Evaluation and Execution of Governmental Programs N. 80: Implementing pre-primary education schools (https://auditoria.cgu.gov.br/download/10722.pdf), p. 42.
6. The report highlights that these estimates are, however, inaccurate and that the Ministry of Education did not implement reliable mechanisms to check and evaluate program results.

In the first phase of Proinfância, from its start in 2007 to 2012, program implementation was based on the availability of standardized construction plans for building nurseries and pre-primary schools following a conventional methodology of construction by masonry. Municipalities could apply by submitting projects to the Federal Government in order to obtain funding grants for new public construction works from the FNDE. After submissions were approved, funding grants awarded and agreements signed, an initial share of the funds were transferred to allow municipalities to start construction. After the approved project was finished, municipalities had to submit financial reports to the Federal Government for accountability and oversight. **Graph 3** below summarizes this process.

After ascertaining that results were below expected and that construction works suffered from delays, a new strategy was introduced for the second phase, which we reproduce in **Graph 4.** So-called innovative methodolo-

Graph 3. Stages of Proinfância implementation, 1st phase (2007-2012)

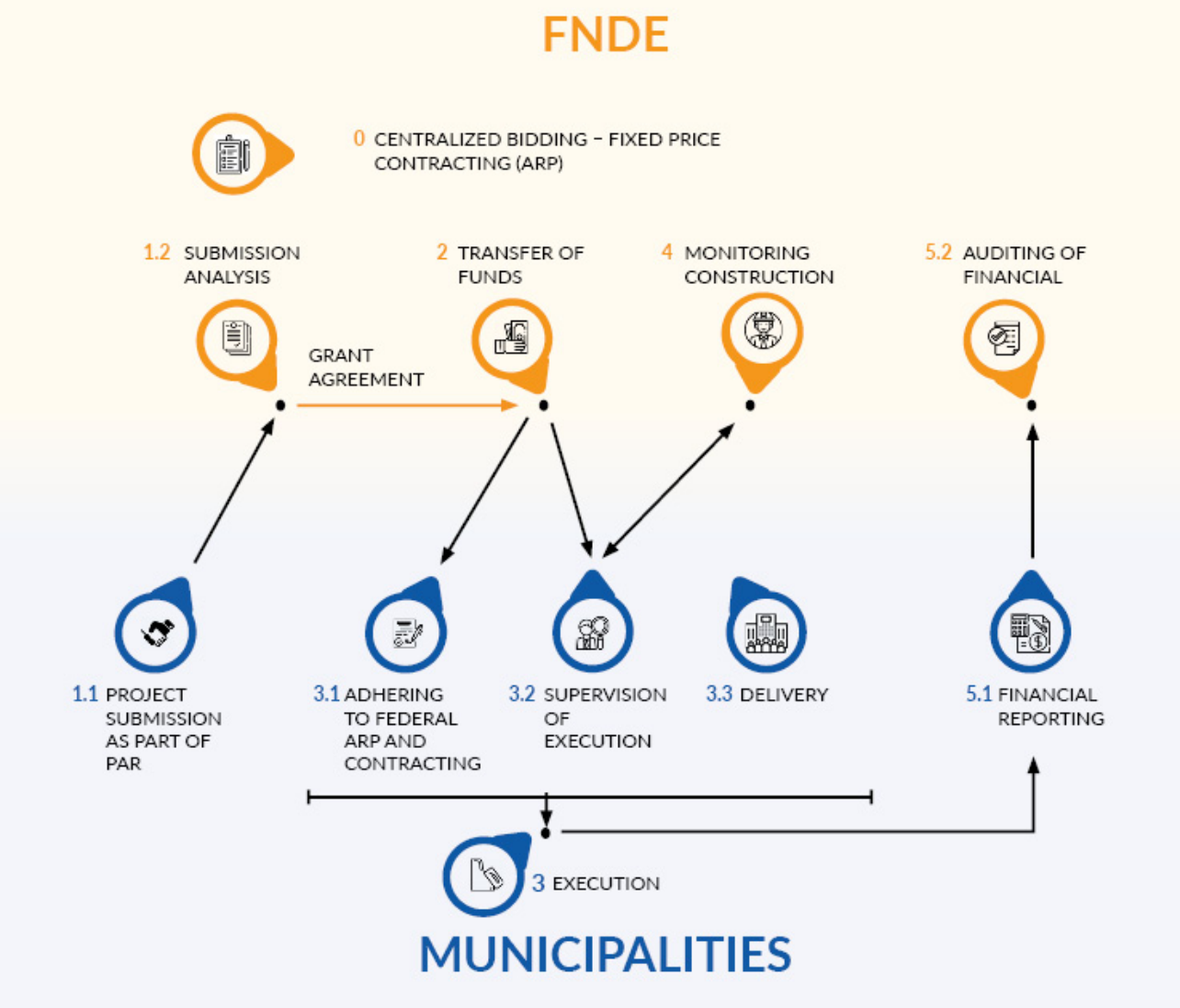


Source: Created by Transparência Brasil, based on stages described in CGU's Report on Evaluation and Execution of Governmental Programs n. 80.

gies of construction were adopted for building nurseries and schools and the Federal government centralized contracting. The goal was to reduce costs and construction time with prefabricated components.

Generally, this new model also failed due to the fact that contractors could not execute all the hundreds of construction works they had been awarded. According to the evaluation conducted by CGU, only 70 of more than 3,500 construction projects

Graph 4. Stages of Proinfância implementation, 2nd phase (Innovative Methodologies) (2012-2015)

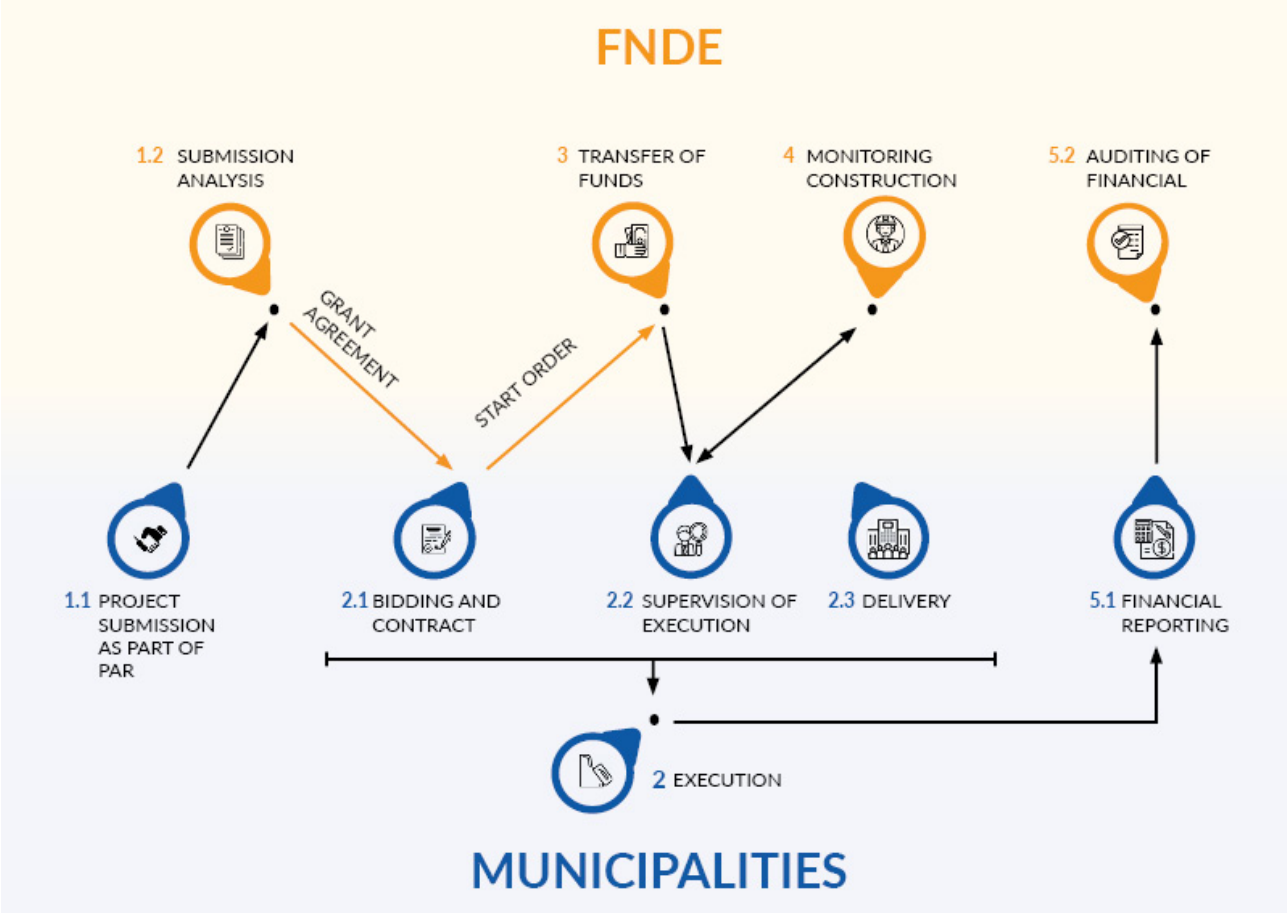


Source: Created by Transparência Brasil, based on stages described in CGU's Report on Evaluation and Execution of Governmental Programs n. 80.

planned to be executed following this new methodology were finished. Almost 60% of construction projects had to be reformulated and grant agreements renegotiated, migrating to the conventional method of execution. Another 249 (7.4%) construction works were abandoned in stages of execution that no longer allowed for this reformulation, remaining unfinished, with no perspective of continuance, generating almost R$ 210 million in potential losses[7].

In 2015, a third phase was started which, in general terms, returned to the initial model, with projects being reformulated to a conventional methodology of execution and decentralized contract awarding by municipalities. However, some adjustments were made in order to improve the program and correct previously identified flaws, as **Graph 5** demonstrates.

Graph 5. Stages of Proinfância implementation, 3rd phase (2015-Today)



Source: Created by Transparência Brasil, based on stages described in CGU's Report on Evaluation and Execution of Governmental Programs n. 80.

7. Report on Evaluation and Execution of Governmental Programs N. 80: Implementing pre-primary education schools (https://auditoria.cgu.gov.br/download/10722.pdf), p. 12.

Among the 135 construction works monitored by Obra Transparente, we observed cases reflecting the models adopted by the all three Proinfância phases. The reason behind it was that, even if grant funds were awarded between 2007 and 2014, some grant agreements had to be remade due to the reformulation of projects planned to be executed following innovative methodologies, which in turn led to the implementation of the third phase, illustrated in Graph 5.

Evidence collected by Transparência Brasil and from the monitoring conducted by partner local social observatories, complemented by other Proinfância evaluations, shows that the program suffered since its start - and even after reformulations - from recurrent flaws that affected practically every main implementation stage illustrated in the graphs. In the following sections we report the most common problems identified in each stage, using for simplification the sequence expressed in graph 3 as reference, eventually mentioning variations in implementation, as illustrated by graphs 4 and 5.

We chose to emphasize problems related to the scope of action of municipal governments, as they were the main focus of our analysis. Another reason was that other evaluations conducted by federal audit agencies, such as the one published by CGU, already offer detailed assessments of problems regarding the scope of action of the Federal government, especially regarding the adoption of innovative methodologies.

School in Jardim Canaã II in the city Uberlândia, Minas Gerais (MG), delivered in 2019. This is the only finished work of all 21 that have been selected for monitoring in this city. Other 19 works were cancelled and 1 has not started yet.

Stage 1: Submitting and analyzing projects

As was shown in the last section, a significant amount of monitored construction works - 58 out of 135 (43%) – were never built. The vast majority of them were cancelled at the end of 2018. At the national level, the amount of planned construction works that have been cancelled is 16% - based on data obtained by the Tá de Pé project on May 27, 2019.

After information collected by partner social observatories with local administrations, we tried to track the causes for this slow pace. Additionally, in municipalities where the vast majority of monitored construction works had still not started, such as Paranaguá (PR), and Uberlândia (MG), members of Transparência Brasil and the local social observatory held meetings with local government officials in order to understand the reasons behind delays in contracting and construction work.

One recurrent obstacle we identified was the designation of **inadequate land plots**. This situation was found in at least 14 construction projects in 6 of the 21 monitored municipalities. Examples of inadequacies were: plots with insufficient dimensions for the planned projects, with property ownership under litigation, or located in construction zones improper for public buildings. There were also cases of plots whose characteristics would generate excessive costs in preparation for the construction work (e.g. slope containment work), which in turn made projects unfeasible and led to their cancellation.

These cases suggest flaws in the stage of project planning conducted by municipalities. In some cases it appears that municipal officials did not make a rigorous analysis on the compatibility between plots proposed for implementation and the standard construction plans, or that other prerequisites for construction were not met, such as property ownership documentation or required environmental licensing. In Paranaguá (PR), for instance, 7 of 8 construction works selected for monitoring were cancelled due to lack of adequate land plots for their construction.

According to regulation concerning grant agreements between the Federal Government and federal entities (states and municipalities)[8], in the case of public works, entities are required to provide property ownership documents and all required environmental licensing in order to apply for federal funding. Therefore, there is evidence of failure also by the Federal Government in securing compliance with these rules.

It is worth mentioning, however, that the identification of suitable land plots in municipalities was made more difficult due to the adoption of standardized construction plans by the program. According to Proinfância original regulation [9], municipalities had to adhere to standardized plans as a condition for financial assistance [10]. After Proinfância was linked to the federal Growth Acceleration Program (PAC) 2, only a selected number of municipalities were allowed to design and submit their own construction plans, following FNDE guidelines. After the introduction of the innovative methodologies, it was also necessary to adopt standardized plans that had already gone through federal public bidding and were awarded by the Federal Government. While the adoption of standardized plans by the Federal Government for municipalities was intended to address possible deficiencies in project design at a local level, it restricted the selection of suitable plots, potentially

8. STN Normative Instruction n. 01, January 15, 1997.
9. CD/FNDE Resolution n. 06, April 24, 2007.
10. There is of course a margin for necessary technical adaptations for the implementation of standardized plans at the local level, however no changes can be made to the project's dimensions and aesthetic standards.

hampering program implementation.

Evidence of inadequacies in land plot selection shows flaws in the most crucial stage of public works: planning. This step is extremely relevant for obvious technical reasons, significantly impacting the project's planned budget. Moreover, it is directly connected to decisive considerations on the definition of a suitable location for construction, for example: demand forecasts for services on the selected location, assessment of the estimated impact on the selected location - considerations that might require subsequent public works. Therefore, it is not an element that can easily be replaced without significant impacting the whole project's design.

As a result, municipalities that after the identification of inadequate land plots have submitted changes to the agreement with FNDE, in order to designate a new site for construction, also faced bureaucratic obstacles regarding the new submission analysis and approval by the funding agency, often making the execution of the project unfeasible.

Stage 2: Transfer of funds

At least from 2011 onwards, after Proinfância was linked to the PAC 2 federal program, federal funds started to be directly transferred to municipalities, with an initial tranche being transferred right after the grant agreement was signed. [11] The transferred amount could represent up to 70% of the total grant (CGU, 2018). One of the problems we verified at this stage of program implementation stemmed out of this practice: with a large share of planned construction works having its award and start delayed, a **significant amount of funds remained unused** for several years, creating great inefficiency in the program funding cycles.

In the third Proinfância implementation phase (see Graph 5), beginning in 2015, several changes were introduced to rules concerning the transfer of funds, so that initial tranches were only transferred after the first start order was issued by the municipality, in other words, only after execution contracts were awarded - and the transferred amount should not exceed 15% of the total grant (CGU, 2018). Thus, some of the problems from the previous rules would be avoided in new construction projects.

With the deterioration of Brazil's fiscal situation in the last few years, the immobilization of funds that had already been transferred to finance projects that were still not being built became even more critical: hundreds of millions of Brazilian reais remained unused in the respective bank accounts, while funds available to finance the conclusion of construction works already in progress started to vanish. For the 55 cancelled projects in the monitored sample of Obra Transparente alone, the amount of transferred funds reaches R$ 23.8 million (adjusted for inflation as of August 2018).

Probably as a consequence of this scenario, there were delays in transfers to municipalities with construction works in progress. During our monitoring, several partner social observatories questioned local administrations about delays in monitored construction

11. CD/FNDE Resolution N. 13, March 21, 2011.

works and one common given justification were these delays in transfers by the Federal government. .

Data from bank account statements regarding funds received by the monitored municipalities from the Proinfância program [12] confirm that in fact significant delays in transfers occurred in some cases. In Gravataí (RS), for example, a construction work that had been abandoned, but was resumed after a new contract was awarded in March 2017, only received new transfers from FNDE in April 2018 - over a year later. A similar situation happened in Chapecó, in the state of Santa Catarina (SC). CGU's evaluation report corroborates the existence of this problem, observing in a sample of construction works an average delay of 284 days between construction start and the transfer of the first tranche. Evidently these delays have an almost inevitable negative impact over the pace of execution, leading to further delays and works being halted, as observed in the cases we monitored.

This may lead to an even graver problem: the misuse of transferred funds. This situation was verified in two of the monitored municipalities, where funds transferred to projects that had not started yet or that were halted during execution were then used to cover expenditures related to other construction works in progress. This practice is completely irregular according to rules and conditions of the grant agreements, which determine that funds may only be used for the specific projects they were awarded to. Even if municipalities end up reimbursing misused funds, this irregularity could result in penalties for implicated government officials[13].

Stage 3: Execution

Following up on the execution stage of construction works was the main focus of the monitoring conducted by our partner social observatories during the Obra Transparente project.

Generally speaking, the work methodology we developed for this project - disseminated through both online and on-site trainings offered to social observers - covers the monitoring of all three sub-stages described in graphs 3, 4 and 5: bidding and contract awarding, project execution and its supervision by the contracting municipalities, and finally delivery of completed works, as well as post-delivery inspections to verify potential execution problems that would fall under the legal warranty period for construction works[14].

As already pointed out in a previous report, one the most important findings from our monitoring was the magnitude of delayed and halted constructions. This type of situation appears to have become 'normal' during implementation of Proinfância projects. Based on analysis of contract documentation, we verified that about 64% of construction works that had been started were halted at some point due to early termination of contracts. Among completed works, delivery occurred with an average delay of more than one year. According to national data analyzed as part of the Tá de Pé project, these problems seem to be generalized. Among 6,477 construction works of nurseries and pre-primary schools that were finished and inspected by municipalities, the median time between contract awarding and the delivery inspection report was almost 900 days, or

12. Based on data from SIMEC and the Integrated System of Financial Management (SIGEF).
13. In both cases, the project team described the situation in reports that were submitted to federal audit and law enforcement agencies.
14. Article 618 of the Brazilian Civil Code provides a five-year warranty for "buildings and other construction of considerable dimensions".

approximately 2.5 years. Among construction projects that were officially halted, the median construction duration was almost 4 years or 1,407 days.

We describe below some of the problems in each execution sub-stage that were observed during monitoring at a local level and that seem to contribute to the amount of delayed and halted projects.

3.1: Bidding and contract awarding

Part of our monitoring during Obra Transparente included the detailed analysis of public biddings related to the contracting of monitored construction works. In the case of new bidding procedures, either for projects not yet awarded or halted construction works that needed to be resumed, we analyzed bid solicitations, technical documents, as well as bid assessment procedures. For works in progress, we also analyzed past contracting procedures, selected after a risk assessment.

An initial recurrent problem was the existence of **flaws in the so-called "basic project"** (projeto básico) during bid solicitation. This is a legal requirement for starting a contracting procedure for construction works[15]. Differently than what its name might suggest, the "basic project" is not "basic" in the sense of being simple, but rather indispensable. Therefore, when publishing bid solicitations, the "basic project" must contain a "set of necessary, sufficient and precise components that specifically characterize the construction work (...), allowing the assessment of the project's budget, as well as the definition of construction methods and execution schedule"[16].

Procurement legislation also requires that basic projects include, among several specifications, "general and specific technical solutions, sufficiently detailed in order to minimize potential reformulations or variations during design and construction phases". After the basic project, an "executive project" (projeto executivo) must be designed with the maximum level of detail concerning services to be executed, beyond the essential characteristics necessary for the bidding procedure, all of which must be sufficiently described in the basic project.

A public bid solicitation with flaws in the design and planning phase can bring about several negative consequences during execution. If the project is technically inaccurate, for instance, even if it is executed within schedule and with no unnecessary additional costs, it could result in a building with compromised functionalities in relation to its planned goals. If a project is incomplete, what was planned during contracting will invariably have to be altered or complemented during execution. Generally this leads to delays in execution, as well as rising total costs, as unforeseen services are added to the contract. Execution delays also lead to contract extension orders, which could in turn bring about the need to readjust contracted prices – thereby also raising final costs. In some cases, new public biddings for additional services may be needed, delaying delivery even further.

Several analyzed biddings presented this kind of flaw. One recurrent technical problem we verified during analysis by our project's Technical Chamber[3] , for example, was the designation of construction sites lower than the street level, which is not recommended for the building's future functionalities after delivery. As a consequence, the future nursery or pre-primary school is built in a sort of "pit", creating potential risks for improper rain drainage and flooding, as well as causing problems for the sewage system, for example. We observed construction works that were already in progress in these conditions in several monitored municipalities. In those cases, the situation is aggravated by the fact that this problem can no longer be undone.

15. Article 7, Paragraph 2, of Law n. 8666 of 1993.

16. Article 6, IX, of Law n. 8666 of 1993.

[3]Translator's note: The Technical Chamber was a project output designed to offer technical assistance to local social observatories in the analysis of public biddings and construction monitoring. It was composed by a team of junior and senior legal and engineering experts.

Another common flaw we observed was that several monitored construction works were awarded based solely on the standardized construction plans provided by FNDE. These standardized plans, however, do not fulfill the requirements of a basic project for contracting procedures. By definition, they must be complemented and adapted by the local administrations to fit the specific context of the site of implementation.

The rules and conditions of Proinfância grant agreements establish that transferred funds will be allocated for the specific construction of the nursery or school buildings per se, while every other necessary service - land preparation, enclosing of the land plot, landscaping, parking lot construction, among other examples - must be executed as co-financing by the local administrations. Taking into account the location where the work will be executed, local governments must design complementary plans for these services and include them in the project's budget in order to start the bidding process. It is also essential that land conditions be taken into account for a potential reformulation of the building foundation plans. This depends on an analysis of soil conditions, for instance, so that foundation plans can be adapted in order to adequately sustain the construction in the selected location.

However, several construction works we monitored were awarded without these project adaptations. In Foz do Iguaçu (PR) three works were awarded based on standardized projects lacking necessary adaptations. The foundation plans proved to be inadequate and almost immediately there was the need for contractual amendments in order to adjust contracted services, generating a delay of several months. In Lajeado (RS), we also identified that the construction work for a nursery school was awarded based only on the standardized plans without the needed modifications.

There were also cases in which essential services were left out of the bidding and award process. In Chapecó (SC) the construction of a nursery school started with a five-month delay, because ground leveling was not included in the project - a fundamental step for the construction work to start. Ground leveling was executed by the local administration in the end, but only after the initial start order had already been issued to the contractor. A similar situation was observed in Foz do Iguaçu (PR). In Cascavel (PR) and in Caçador (SC), there were cases of construction works in which the main school building had already been completely built before the local government acknowledged the need to conduct new bidding procedures for complementary services, such as drainage, fencing, artesian well drilling, electrical service entrance installation, paving - among other indispensable services that should already be part of the project prior to the first contracting procedure.

Another common flaw we observed in these analyses were **inadequacies in the formulation of bidding notices**, especially regarding the definition of criteria to assess the technical and financial capacity of bidders - a crucial element of risk management in public contracting. For local governments, it is fundamental to adopt these criteria in order to avoid selecting contractors that with insufficient financial capacity to meet the construction schedule or even finish the work, or that do not have the necessary technical expertise to execute services adequately, potentially delivering a poor quality building that could pose risks to its future occupants.

In assessing the financial capacity of bidders, a common requirement is a minimum level of assets or capital stocks, which are calculated relative to the estimated contract amount - up to 10% of estimated costs, according to procurement legislation[17]. In a bid for a construction with estimated costs of R$ 3 million, for instance, the bid solicitation

could require that bidders possess a minimum capital stock or net assets of R$ 300,000. The goal is to select contractors that demonstrate sufficient capacity to finance the construction at the necessary pace. Other common requirements are proofs of good financial conditions by potential bidders, based on liquidity and debt ratios, for example.

In some of the assessed contracting procedures, however, assessment criteria were insufficient to ascertain the adequate financial capacity of bidders to execute the construction projects. In Cascavel (PR), for example, in a bid solicitation for a new Proinfância nursery with an estimated cost of R$ 3.4 million, bidders were only required to prove the absence of insolvency or bankruptcy claims, with no other requirements to demonstrate their financial capacity. The awarded contractor had only R$ 20,000 in capital stock, less than 1% of the contract's final value. In Gravataí (RS), an emergency award procedure to complete three unfinished nurseries in 2017 also failed to properly assess financial conditions of the contractor, which was awarded a R$ 4.6 million contract, despite having a capital stock of only R$ 20,000. The risk taken by the local administratoin turned into significant delays in construction, and none of the three projects have been finished yet - over two years after the contract was awarded.

Regarding the assessment of technical capacity, it is common that bid solicitations for larger public works require previous experience in the execution of works of "similar" or "compatible" complexity, in relation to the project being contracted. However, what this means and how it is going to be assessed must be clearly defined in the bid notice. If a local administration intends to award a contract for the construction of a 1,500 sq. m nursery school, for example, it must clearly state in the bid solicitation if the required experience is related to the construction of a building with a minimum compatible size, or related to the execution of the same type of foundation, roofing, similar paving, doors and windows installation, among other possible relevant elements. These criteria must also be technically justified and well founded in the bid preparation documents.

Nevertheless, some of the analyzed bidding processes had notices with ambiguous or unclear clauses in relation to the parameters to be used in assessing the technical capacity of bidders. The requirements for experience in "similar" or "compatible" work commonly did not adequately define these meanings, leaving room for doubt on the criteria to be used for assessing whether bidders met them. This violates the principle of objective and fair assessment applicable to public contracting, making room for arbitrary decisions in the qualification of bidders. Furthermore, by not adequately defining these criteria, the contracting administration risks awarding a contract to a company without adequately assessing its technical capacity to execute the contract.

At the other extreme, there are also public bid notices in which assessment criteria are well defined, but requirements are so excessive that they potentially restrict competition. In these cases, there is a risk that only a few bidders are able to meet the requirements, resulting in a less economic contracting, with bids higher than they would be under more competition. More serious cases are those in which there is restriction to competition is deliberate, i.e. when there is intent to favor a certain contractor or when bidders act in collusion with local governments.

In the analyzed bid notices, we also found evidence of cases with potentially restrictive technical capacity requirements, when proof of previous experience in very specialized services was demanded, which were not significant to the set of services being contracted. This is contrary to existing jurispru-

17. Article 31, Paragraph 3 of Law n. 8.666 of 1993.

dence by Courts of Accounts (Tribunais de Contas). In Uberlândia (MG), the bid solicitation for concluding an unfinished school required previous experience in the execution of highly resistant granite floor, whose cost amounted to only 2.4% of the total contract costs. In Pelotas (RS), a bidding procedure for resuming work in three halted projects required previous experience in the execution of 10 meter-deep pile foundations, a service item with an estimated cost of only 0.16% of the total construction costs.

Another example of inadequacy in bid solicitation notices with potentially restrictive effects occurs when multiple construction projects are awarded as part of a single bidding process. Also in Pelotas (RS), the same procedure mentioned above was an example of this. It is evident that fewer potential bidders are likely to meet financial and technical qualification requirements for executing a single contract encompassing three construction works, than if they were contracted as separate items. For this reason, procurement legislation and relevant jurisprudence have established the principle of division into lots (parcelamento) as a general rule that should always be adopted whenever division is possible [18]. Exceptions are allowed, if properly justified. In the case of Pelotas, after the local social observatory verified in the published notice that the decision to bid the three construction works as a single project was not justified, a request for suspending the bidding process and reformulating the notice was submitted to the local administration - but later denied. The process had a single bidder. Contracting did not occur, as, prior to the signature of the contract, the company filed for bankruptcy, which led to the cancellation of the whole bidding process. Even after the local social observatory filed the complaint, a new notice was published with no alterations or corrections in the clauses adopted.

Beyond these flaws in bid notices, we observed several cases in which omission and lack of due diligence by the contracting authority allowed disreputable companies to be awarded contracts - bidders that effectively committed fraud in their bid proposals. A recurrent situation was the following: a new company, only recently established or active as a construction firm, submits a bid proposal attesting its technical capacity based on apparently forged documents. It ends up being awarded the contract with a much lower bid than its competitors, and also significantly lower than the estimated contract value. Generally speaking, these are dummy companies that hide the participation of a larger competitor in the bid, or registered under fake owners, hiding the true owner. The reason behind it is simple: the hidden owner is often someone with a history of fraud or misconduct in connection with other companies, or someone who faces legal penalties that prohibit them from contracting with the Public Administration[19].

These examples show that local administrations seem to conduct only formal evaluations of the documentation submitted by bidders, without any deeper assessment on their veracity. However, as part of more effective risk management practices in public contracting, given how often fraud on the part of bidders takes place, more rigorous evaluation procedures are necessary. Public procurement legislation provides for measures to be taken with the intention to clarify any doubts concerning submitted information and documentation. Decisions by the Federal Court of Accounts (TCU) encourage the adoption of such measures, which, in the analyzed cases, were apparently neglected by municipalities.

3.2: Supervision of contract

Contracting legislation requires that agencies awarding contracts must supervise contract execution[20]. It states that, for every public contract awarded, a public servant shall

18. Article 23, Paragraph 1, of Law n. 8.666 of 1993; and Federal Court of Accounts (TCU) Precedent n. 247.
19. At least five cases like this were identified by the Technical Chamber, and suspicions were reported to federal audit and enforcement agencies for further investigation.

be designated to supervise the contractor's compliance with the terms and conditions of the contract. The public servant must also have the necessary knowledge and be properly trained to perform such task. In the case of public works, only professionals in the areas of engineering or architecture can perform this role and must register their technical responsibility for the supervising function with their respective professional boards.

Problems observed in the execution of monitored works indicate that there are **deficiencies in contract supervision by municipalities**. Ideally, the designated contract supervisor should frequently inspect the construction site, following up on each successive stage of execution. They must also verify whether the construction schedule is being followed and whether invoicing corresponds to what was contracted and effectively executed. However, according to reports by partner social observatories, several construction works had execution flaws, including poor quality services, deviations from construction plans or materials used with inferior characteristics to those specified in the contract. These flaws should have been identified and reported by the supervisor, and corrections should have been demanded to the contractor and the situation informed to superior officials, if deemed necessary.

A common "trick" we observed in several works and municipalities was the installation of glass with a lower thickness than what was specified in the contract, therefore with a lower resistance, which could eventually harm children at nursery schools. Perhaps this is an example of a detail rarely verified by supervisors, and contractors may end up using this as a way of increasing profit. However, it is also an example of overinvoicing, which damages public coffers and should be more effectively prevented.

In some cases, observed failures in supervision were in some ways corrected after monitoring by our partner social observatories. In Foz do Iguaçu (PR) and Goioerê (PR), and Taubaté, in the state of São Paulo (SP), for example, volunteers of the Obra Transparente project identified problems that were promptly reported to supervisors and the local administration. As a result, corrections were demanded from contractors and were executed in most cases.

An important factor behind these failures is that, in some municipalities, the allocation of public servants for contract supervision is not sufficient. Also in Foz do Iguaçu (PR), the local social observatory informed that the local administration had only two engineers to supervise more than 20 construction works in progress. In Uberlândia (MG), social observers reported that the local government did not even have a formal procedure for designating supervisors, failing to comply with federal regulation.

It is worth highlighting that deficient contract supervision increases the risks of noncompliance with the terms and conditions of contracts, such as delayed and abandoned works as we verified during our monitoring, and also losses when services are inadequately executed.

3.3: Delivery

When a construction work is finished, there is a formal procedure for delivery to be conducted by the contracting agency. A first step is to make a provisional delivery, after which the contracting body (in this case, local administrations) must thoroughly inspect the building within 90 days after delivery, and ascertain whether it was executed in accordance with the contract. After this confirmation, final delivery takes place.

The monitoring conducted by social observatories also identified problems at this stage - particularly regarding **final**

20. Art. 67 of Law n. 8666 of 1993.

delivery of constructions showing visible inadequacies and execution flaws. In some cases, construction works were accepted with poorly executed services, or services that were still unfinished.

In Palhoça (SC), for instance, one of the nursery schools delivered during our monitoring had a decorative brick wall improperly fixed, with parts that became loose. The nursery school went into operation, without any corrections, so the staff had to isolate the area to minimize the risk of injuries to the children. Part of the building could therefore not be used due to a problem for which a solution should have already been demanded to the contractor.

In Goioerê (PR), the social observatory volunteers found after visiting a finished school that some windows were incorrectly installed, compromising their functioning, and some finishing work remained to be done - such as installing metal support bars in the accessible toilets. These are situations that clearly compromise important aspects for the proper utilization of the building, as well as the safety of its users.

In the case of constructions delivered with incomplete services, it is important to highlight that it is also an example of overinvoicing, made possible by flaws in the previous step, the supervision of contract, as mentioned above. It demonstrates chain effects produced by problems verified in different stages of implementation, without timely intervention by responsible actors involved in the implementation of the policy, ultimately hindering the fulfillment of its objectives.

Poorly executed wall with a risk of collapsing in a nursery school in Palhoça (SC), posing risks to the building's occupants (pictures taken on March 6, 2019 by volunteers of the social observatory in Palhoça).

Stage 4: Monitoring construction works

While execution takes place, FNDE monitors its progress through data and documentation submitted by municipalities onto the SIMEC platform. The system centralizes information on: bidding processes; contracts; inspection reports by the FNDE staff or by contracted inspecting companies that perform inspection of construction works on location; transferred funds; and progress reports, in which every executed service is reported, as well as every payment made to the contractor. SIMEC has also a public interface[21], but only part of the information submitted by municipalities is made available to the public.

Based on information obtained on the 135 monitored construction works by Obra Transparente, we identified, however, **outdated or inconsistent data available on SIMEC**. By comparing them with the data obtained by social observatories or by information provided by municipalities in response to our FOIL requests, we identified divergent information available in the system for a great amount of construction works - for example, works stated as "in progress", but that were in fact halted, and works stated as "not started", which were in fact in progress.

For the most part of construction works we also identified incoherent and contradictory information in the data inserted by municipalities. Some examples are: progress and inspection reports that do not correspond to the execution progress stated by municipalities; delivery dates incompatible with the contract schedule; bidding information with no updated information on contracts; or even inconsistencies in banking movements in the accounts receiving federal transfers.

Unreliable information on SIMEC presents two relevant implications for the monitoring of construction work implementation. Firstly, as this is the main analysis tool for the FNDE, these flaws generate vulnerabilities in federal oversight mechanisms. An interesting example is found in the CGU's evaluation report published in 2018: among 1,922 construction works stated as "finished" on SIMEC until March 2017 and inspected on location by FNDE inspection teams, only 176 (9%) had in fact 100% of the services delivered by contractors[22]. In other words, information provided by municipalities does not allow for the agency that monitors policy implementation to adequately assess its results and produce precise evaluations in order to plan for their correction.

21. http://simec.mec.gov.br/painelObras/lista.php

The second implication of verified deficiencies in the quality of the available information is that they create **obstacles to effective social monitoring** of the public policy. The information that can be accessed by the public is already incomplete, and the fact that it does not always correspond to reality also prevents citizens from following the progress of construction works in their municipality. Faced with this issue, the Obra Transparente monitoring work submitted FOIL requests to local administrations, according to Law n. 12.527 of 2011 - Freedom of Information Law (FOIL). But our experience shows that using this tool to obtain information on monitored works is not always effective, due to persistent obstacles to FOIL implementation at a local level[23].

Nursery in the Jardim Iguaçu neighborhood in Paranaguá (PR), finished in 2017 and in operation for over a year. On SIMEC, the work is stated as 'finished', but with an outdated execution progress report of only 80%.

22. Report on Evaluation and Execution of Governmental Programs N. 80: Implementing pre-primary education schools (https://auditoria.cgu.gov.br/download/10722.pdf), p. 57.

Stage 5: Financial reporting and accountability

Obtaining detailed information on financial reporting by municipalities was outside the scope of monitoring by Obra Transparente. Thus, information on how this process is conducted by monitored municipalities was not collected.

However, information presented in the CGU's evaluation report regarding delivery and accountability by FNDE shows that this stage also shows enormous deficiencies, and it is worth mentioning them here in order to illustrate the main existing problems in the final stage of Proinfância implementation.

An important flaw is related to bureaucratic obstacles to financial reporting. According to the CGU's evaluation, in 77% of concluded grants, a point at which projects enter the financial reporting phase, municipalities could not properly perform this task, as they did not have the necessary clearance or certification to use FNDE's Financial Reporting Management System (SiGPC). Thus, in most identified grant agreements, financial reporting was not possible due to operational flaws in accessing and using the necessary system for a fundamental stage in controlling how transferred public funds were being used[24].

As a consequence, the evaluation found an **ineffective control structure** over how public funds are used, with a small share of the total funds transferred by the Proinfância program being actually reported. CGU verified that financial reports covered only 11% of the R$ 6.4 billion that were transferred to municipalities until 2017[25]. Thus, there is no effective control over the use of a vast amount of public funds employed in the construction of nurseries and pre-primary schools. This situation is worsened by the fact that FNDE does not have sufficient operational capacity to adequately audit the financial reports submitted by municipalities, so that only 15% of them were in fact analyzed[26].

CGU also identified 110 cases of omissions in financial reporting, in which municipalities did not submit their reports on schedule. For these cases, FNDE should take administrative action and if necessary create Special Audit Procedures (Tomada de Contas Especial) to investigate them, identify possible losses and hold municipal officials accountable. The CGU's evaluation identified that these procedures were only initiated in 16% of cases in which they would be appropriate - showing that this control mechanism is not effectively used[27].

In conclusion, a crucial step in controlling how federal funds are used is almost inoperative against bureaucratic obstacles, insufficient operational capability to assess submitted information and the ineffective application of available sanction mechanisms in cases of mismanagement.

23. https://www.transparencia.org.br/blog/wp-content/uploads/2019/05/Diagnostico_TdP_OT_LAI_2019.pdf
24. Report on Evaluation and Execution of Governmental Programs N. 80: Implementing pre-primary education schools (https://auditoria.cgu.gov.br/download/10722.pdf), p. 63
25. Idem.
26. Idem, p. 64.

CONCLUSION

This report presents the main findings of the Obra Transparente [Transparent Public Works] project, during its implementation over two years by Transparência Brasil in partnership with Observatório Social do Brasil (OSB) and 21 local social observatories, following up on the construction of 135 nurseries and schools funded through the federal program Proinfância in the selected municipalities.

Our monitoring identified serious failures in program implementation and disappointing results in the fulfillment of its goals in analyzed cases. From data gathered on construction works at the national level and analyzed by the Tá de Pé [Is it standing?] project, as well as project evaluations published by federal audit agencies, such as the Federal Comptroller's Office (CGU), we concluded that the problems verified seem to be generalized throughout the country.

Qualitative information gathered by partner social observatories reveals that causes to the identified problems are not restricted to specific stages in Proinfância implementation, but they are rather systemic, covering every relevant stage from project planning to its conclusion - in those cases when construction is actually completed. Based on information provided by the CGU, we have found that even the final auditing stage is very precarious.

Considering the observed problems, it is important to look at the program from a general perspective, analyzing its goals and bringing to attention the challenges that seem to prevent their fulfillment 12 years after this policy was first implemented. With this we seek to contribute to a debate on how these challenges can be overcome through reforms that aim at improving the policy in a significant way, in order to make it more efficient.

Proinfância was conceived to increase children's access to public nurseries and pre-primary schools, as well as improving the infrastructure of public pre-primary education in the country. At the moment of its introduction in 2007, the amount of babies and children between 0 and 3 years of age that attended nurseries in Brazil was only 12%[28]. According to data from 2017[29], this number increased to 32.7%. However, it is still far from the National Education Plan (PNE) planned goal of 50% until 2024. For children in pre-primary school age (4 to 5 years of age), that would also attend these schools, access increased from 89.4% in 2014 to 91.7% in 2017 [30]. Until 2024, the PNE's goals are to reach 100%[30].

27. Idem.
28. Fundação Abrinq, "Cenário da Infância e Adolescência no Brasil" report, 2018 (https://observatorio3setor.org.br/wp-content/ uploads/2018/04/cenario_da_infancia_2018_internet.pdf).
29. PNAD "Contínua Educação" report, 2017 (https://biblioteca.ibge.gov.br/visualizacao/livros/liv101576_informativo.pdf).

Although there were improvements in access to pre-primary education, especially among younger children, the perspective that Proinfância will contribute to reach PNE's goals is negative. According to CGU's evaluation reports, there is a deficit of over 2 million spots in order to reach these goals. Even considering the maximum capacity that was planned by Proinfância and taking into account all planned construction works, these numbers would still not reach the goals[31].

Taking into account the current situation of reduced public investments, a large number of cancelled works and a small amount of finished projects that effectively went into operation, the potential impact of the program on the PNE goals will be low.

RLooking back at the qualitative analysis presented here in this report, the reasons behind these poor results - with only 43% of planned units being finished, according to estimates by the Tá de Pé project, based on SIMEC data from May 2019 - become clear. Considering the five main stages in the program, illustrated in graphs 3, 4 and 5 and discussed in this report, we can say that program implementation became a kind of 'obstacle race', in which after every phase more planned construction works have no perspective of being finished.

In the initial phase, we saw that some construction works became unfeasible due to basic planning failures, for example the designation of an improper land plot. In the following phase, problems related to transfer of funds also contributed to inefficiencies in the funding cycles, with many delays in execution and projects being halted. Inadequacies in contracting by municipal administrations, in turn, frequently brought about risks to implementation - when contractors with no sufficient financial or technical qualifications, or even disreputable companies, were awarded contracts, increasing risks of delays and projects being halted. Adding failures in contract supervision and delivery, we have a situation where works may be eventually completed, but are poorly executed, creating problems for its future use. Parallel to that, we also verified that monitoring, controlling and accountability mechanisms are generally inefficient.

This 'obstacle race' towards failure in municipalities can be summarized as follows:

1. **Flaws in the planning of construction projects;**
2. **Inadequacies in the formulation of bid solicitations;**
3. **Omissions and lack of due diligence by the contracting authority;**
4. **Deficient contract supervision by municipalities;**
5. **Final delivery of constructions showing visible inadequacies and execution flaws.**

Thus, we have a reality in which, in the case of construction works that were not already doomed from the start, the processes

30. http://www.observatoriodopne.org.br/indicadores/metas/1-educacao-infantil/indicadores
31. Report on Evaluation and Execution of Governmental Programs N. 80: Implementing pre-primary education schools (https://auditoria.cgu.gov.br/download/10722.pdf), p. 76.

behind contracting and execution often lead to an extremely slow implementation, susceptible to interruptions. In the case of construction works that are delivered in the end, the minority of cases we might add, there are several examples of execution flaws that compromise buildings, their usability, and, even worse, the safety of children and babies that will attend them. All of this without proper mechanisms to correctly assess how public money was used during the process and curb irregularities.

This prospect is worsened by the fact that more than half of finished works are yet in operation, due to factors that go beyond the direct implementation scope of Proinfância in the stages we described. This fact demonstrates a further additional bottleneck to extending educational infrastructure, possibly related to the high costs of operating early education units and possible barriers to funding this stage – a stage that is even more crucial for the expectation that this public policy will offer a return to society.

Therefore, the results we verified show the urgent need for reforming and redesigning the program, taking into account the diversity of stakeholders involved. Only in this way we can have an efficient public policy that effectively contributes to PNE goals and improves education throughout Brazil.

ANNEX – FREEDOM OF INFORMATION REQUESTS

Request 1. "Object: Data on works funded by FNDE

Prezados,

Dear,

According to Law n. 12.527 of 2011, we request the following information concerning the funding agreement awarded by the National Fund for Educational Development (FNDE) to the municipality of [NAME] for construction works. The requested information is listed below:

1. Current situation of the construction work;
2. Start date (based on the first start order of the first contract);
3. Percentage of completion;
4. Date of last progress report;
5. Scheduled due date;
6. For concluded works: date of delivery;
7. For works not started yet, is the work scheduled to be executed, in according with the 2019 annual budget law?

We request the information to be sent in one single table (.xls or .csv format). If possible, each line in the table corresponding to one construction work, and each column corresponding to one requested information (items 1-8).

As in the following example: https://bit.ly/2MTSWTz

If it is not possible to send the file through the system, or if the system does not have email notifications, we kindly ask for the file to be sent to: [email].

List of construction works:

Regards,

Transparência Brasil"

Request 2. "Object: Data on contracts for executing works funded by FNDE

Dear,

According to Law n. 12.527 of 2011, we request the following information concerning contracts that were already signed and were awarded for funding by the National Fund for Educational Development (FNDE) to the municipality of [NAME]. The requested information is listed below:

1. List of EVERY contract (in progress, finished, terminated) for executing construction works listed below. We request information of contract number, name and national register of every contractor.
2. Integral copies of requested contracts in item 1, as well as any possible amendments or changes.

We request these documents to be sent in digital format. If it is not possible to send the files through the system, or if the agency's system does not have email notifications, we ask for the files to be sent to: **[email]**.

List of construction works:

Regards,
Transparência Brasil"

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