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Public Works Insurance in Brazil

ABSTRACT

Objective: To describe the types of guarantees used in Brazilian public works contracts from 2018 to 2022.

Method: This cross-sectional study used a non-probabilistic sample of 130 federal and state public works contracts executed between 2018 and 2022. Data were obtained from transparency portals and, when necessary, via information access requests through Brazil's Citizen Information Service (e-SIC).

Originality/Relevance: The existing literature lacks studies that identify the most common mechanisms used to ensure the execution of public works contracts and analyze their forms of implementation in Brazil.

Results: The surety bond is the most common form of contract guarantee. However, the high number of contract amendments in the agreements analyzed indicates that, in their current form, they fail to ensure compliance with deadlines and budgets. Additionally, standardized, claim-based policies prevail, which disregard the project's and contractor's specific risks and offer coverage amounts insufficient to compensate for losses arising from noncompliance.

Theoretical/Methodological contributions: This study identifies gaps in the literature on the effectiveness of public works insurance in Brazil and offers recommendations to address them.

Social/Management contributions: The study suggests that surety bonds may be insufficient to ensure contractual performance, highlighting the need for greater transparency, enhanced managerial training, and tailored guarantees to safeguard the contracting authority.

Keywords: Public Works, Risk Management, Insurance, Surety Bond, Public Procurement.

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1 INTRODUCTION

In Brazil, public works projects frequently experience schedule delays, cost overruns, and high rates of incompleteness (CBIC, 2023). According to the Federal Court of Accounts Judgment No. 1079/2019, half of the public projects funded with federal resources were halted. In 47% of cases, projects were abandoned due to technical issues, and in 23% due to contracted companies failing to meet their obligations (TCU, 2019). In July 2025, the Federal Court of Accounts reported that 11,469 public works projects nationwide had been halted, with education and healthcare accounting for 70% of these cases (TCU, 2025). In this context, the need to improve management practices for public works contracts becomes clearer, especially considering the substantial federal budget allocated to the New Growth Acceleration Program (New PAC), which totals R\$371 billion and funds investments in infrastructure across sectors like health, education, culture, sports, energy, and transportation. (Brazil, 2023).

In this serious case of non-performance, it is clear that the contractual guarantees provided by law, which are intended to ensure the proper fulfillment of the contractor's obligations toward the public authority, are not being effectively enforced (Paschoa & Rocha, 2020). Improving the planning and management of public contracts is a crucial step in preventing the risks of non-performance, delays, and higher costs associated with public works (TCU, 2019, 2020; Vieira et al., 2024; Spagnolo et al., 2006). Therefore, explaining how the different forms of guarantee are used in Brazil's public works contracts is an important first step toward correcting errors and enhancing this vital management tool.

Brazil's New Public Procurement Law (Law No. 14,133/2021) defines various types of contractual guarantees, including cash, public debt securities, bank guarantees, and surety bonds (Nóbrega & Netto, 2022). Each type has its own methods of operation and applications in contracts. Recent studies in Brazil have explicitly focused on analyzing insurance to enhance contractual performance. Gomes (2017) examined the appropriate timing for the public

authority to require a performance bond (surety bond) as a guarantee for a construction contract. Lopes (2020) explored the reasons behind the high percentage of stalled and abandoned projects in Brazil. Macedo et al. (2019) studied the characteristics of the performance bond and its potential role in public works contracts. Lastly, Marques et al. (2022) investigated the relationship between the actors and the transactions involved in the issuance of surety bonds.

This article adds to the literature by describing the types of guarantees used by public authorities in public works contracts in Brazil. To achieve this, we identified the guarantees actually used in public works contracts and analyzed how each type affects protection against cost increases and deadline extensions. The analysis covers contracts signed between 2018 and 2022.

The article is organized into six sections, with this introduction as the first. The second section explains the research methodology. The third part, divided into two sections, presents a literature review examining the risks associated with public works contracts and the insurance mechanisms available to cover them. The results are then analyzed. The final section provides conclusions, along with the study's limitations and suggestions for future research.

2 LITERATURE REVIEW

2.1 The inherent risks in public works contracts

Public works contracts are inherently complex due to their specialized nature. This high level of uncertainty increases the risks involved in engineering projects. According to Hughes et al. (2015), the public works contracting process involves complex financing, organization, management, and decision-making. Throughout all stages of development, managing public works contracts requires a high level of technical expertise from managers.

Generally, the Federal Court of Auditors (2013) identified, through TCU Judgment No. 2622/2013-Plenary, five risk categories related to projects. These risks, which must be

measured in the BDI (Budget Difference Index) risk rate and reflected in the risk allocation matrix, include: (a) construction risks, (b) normal project risks, (c) risks of project errors, (d) risks linked to administrative events, and (e) extraordinary risks. However, a detailed list of potential adverse events can easily identify many risks inherent to project contracting (TCU, 2020). This comprehensive list should cover events such as inadequate basic design, inappropriate procurement methods, oversight failures, and other key factors.

According to Portugal (2022), the risks inherent in public works procurement have various sources. Among the leading causes highlighted by the author, the conflict between political interests and the procurement procedures required by law, along with the limited technical capacity of the teams responsible for planning, managing, and evaluating public procurements, stand out. In this regard, especially for contracts of a certain level of complexity, such as those involving public works, a more robust governance structure is required than for the acquisition of common goods.

The Federal Court of Accounts (2013) has issued guidelines, as outlined in Judgment 2.622/2013, targeting public managers, particularly those involved in highly complex and expensive contracts, to help them manage risks effectively. With the enactment of Brazil's New Public Procurement Law, this practice has become not only a recommended technical approach but also a legal requirement.

According to Nascimento et al. (2021), incorporating risk management has become increasingly important in public procurement, with some viewing it as a key element in decision-making for this process. This practice offers a comprehensive view of the organizational context, enhances efficiency, and serves as a deterrent against poor planning and the misuse of public resources, thereby contributing to improved governance in public organizations (Vieira & Araújo, 2020; Vieira & Barreto, 2019).

Therefore, the Brazilian New Public Procurement and Contracting Law (Law No. 14,133/2021) emphasizes the importance of the planning stage. Planning tools, such as the Preliminary Technical Study and the Risk Management Plan, are vital for providing reasonable assurance of achieving contracting goals. Hughes et al. (2015) note that the absence of these planning artifacts prevents contracting authorities from adequately managing inherent contracting risks, leaving them vulnerable to adverse impacts, often evidenced by deadline extensions, added costs, or even partial or total failure to complete the work.

A study by Brandstetter and Ribeiro (2019) on the causes of additional costs and financial impacts on public works projects from a risk management perspective found that many of these problems stem from the planning phase. Deficiencies in basic project design and budget gaps are key factors driving up costs in public works projects. This finding underscores the importance of thorough planning, as it demonstrates that many problems can be avoided during this crucial stage of the contracting process.

While thorough planning can significantly help reduce the risks inherent in public procurement, it is important to recognize that many of these risks can still occur and affect the outcomes of the procurement process; this is especially true because the transaction costs in complex public works projects are particularly high (Klein, 2020; Camelo et al., 2022). In this context, implementing effective governance mechanisms, such as risk management systems, is vital for improving performance (COSO, 2017). One of the most important risk management treatments is risk sharing, a common practice in public works contracts, primarily through insurance.

2.2 Insurance for Public Procurement Contracts

An insurance contract is a risk management tool that enables individuals or companies to protect themselves against events that could cause material, financial, or personal harm. It is a contract in which "one of the contracting parties (the insurer) assumes the obligation to pay the other (the insured), or whomever the insured designates, compensation, capital, or income upon the occurrence of the agreed risk, with the insured, in turn, obliging to pay the established premium" (ENS, 2019, p. 13). In essence, insurance contracts connect the insured to the insurer through risk sharing, as evidenced by the payment of a premium and the eventual provision of compensation.

In the context of public contracts, their purpose is to ensure that the contractual object is executed in accordance with predefined requirements or to provide financial compensation if the insured object is not fulfilled (Moelmann et al., 2009). This is vital for creating an effective incentive structure that motivates contractors to faithfully meet their contractual obligations, including the budget (contract price), schedule (execution period), and quality (technical specifications) (Vieira et al., 2024). Extending a project's deadline is a serious consequence because it deprives the company financing the project of timely benefits, negatively affects the planning and execution of related government programs, and leads to higher indirect costs and inputs, often necessitating contractual adjustments, without adding real value to the project. Failing to meet a project's schedule often results in the payment of undue cost adjustments (Uryn, 2016). Therefore, surety bonds can play a vital role in protecting the public interest (Macedo et al., 2019; Moelmann et al., 2009; FENASEG, 2000, as cited in Poletto, 2003).

From a legal perspective, contracts must adhere to the principle of good faith, which relies on accurate information, sufficient transparency, and the sharing of relevant data between the parties. However, in practice, administrative contracts are often formed in situations with high information asymmetry (Costa & Terra, 2019; Bajari & Lewis, 2014). According to

Nóbrega and Netto (2022), technical and economic qualification criteria, for example, are not enough to prove the contractor's actual ability to carry out the project. From an economic perspective, bidders may conceal important information during the tendering process (adverse selection) or breach contractual obligations to gain unfair economic advantages (moral hazard) (Katz, 1999; Nóbrega & Netto, 2022; Beuve et al., 2019; Fugger et al., 2019). In this context, the use of guarantees, especially surety bonds, is crucial for preventing opportunistic behavior and ensuring full compliance with contract terms (Birulin, 2020; Calveras et al., 2004; Engel et al., 2006; Wambach & Engel, 2011).

Based on data from US public works projects, Giuffrida and Rovigatti (2022) demonstrate that surety bonds reduce delays and additional costs by 10.5% and 3.7%, respectively. According to the authors, after deducting insurance premiums, which are legally included in the awarded amounts, this effect results in savings of about 4% in the federal project budget, reaching up to 16% for projects between \$100,000 and \$150,000. According to Myers and Najafi (2011), who analyzed state public works projects in the United States, this type of surety bond is especially beneficial for states with a high volume of contract defaults.

In Brazil, insurance is one of the types of guarantees provided for in administrative contracts, alongside cash, government bonds, and bank guarantees (Nóbrega & Netto, 2022). These guarantee types were included in both the old Public Procurement and Contracting Law (Law No. 8,666/1993) and the Differentiated Contracting Regime (RDC) (Law No. 12,462/2011), and more recently, in the New Public Procurement Law (Law No. 14,133/2021) (Brasil, 1993; 2011; 2021). In all these regimes, the guarantee requirement is not mandatory and can be reduced or waived entirely. Additionally, the decision to use these modalities is at the discretion of the Administration, which determines in the Notice whether guarantees are required and which modalities are accepted. The laws set a general limit for guarantees at 5% of the contract value. However, the NLLC, aligning with the RDC, relaxed this limit by

allowing an increase of up to 10% if the technical complexity and risks are deemed acceptable. For large-scale engineering projects and services, the guarantee insurance amount can go up to 30% of the initial contract price.

The surety bond process involves evaluating or prequalifying the company responsible for executing the main contract. This evaluation considers criteria such as the company's creditworthiness and its experience in the construction industry (Russell, 2000). The surety bond is formed between the winning bidder (either the purchaser or the contractor) and an insurance company (the insurer), resulting in a surety bond policy designed to guarantee the performance of the obligations set out in the main contract, where the public authority is the insured and the contractor is the policyholder. An insurance broker can act as an intermediary between the policyholder and the insurer. This broker assesses the company's ability to complete the work and has the authority to sign the guarantee offered by the policyholder to the insurer (Russell, 2000; Schalch, 2012).

Traditionally, surety bonds are divided into three main categories: bid bonds, performance bonds, and payment bonds.

First, the bid bond covers the cost of re-bidding if the winning bidder fails to fulfill the obligations initially agreed upon. The performance bond ensures the commitment to construct the project properly. Moreover, finally, the payment bond covers the costs of materials and labor (Galiza, 2015, p. 27).

According to Russell (2000), insurers offering surety bond policies can prepare them through underwriting or loss-based approaches. By choosing underwriting, the insurer will approve contractors that pose only appropriate or acceptable risks, which are identified after a thorough analysis of their financial condition. Conversely, by selecting claims-based methods, the insurer accepts any contractor, even if they might not complete the work for any reason. In this case, the insurer performs a quick assessment of specific default points and implements

mitigation actions for the identified risks. In the Brazilian market, regulated by SUSEP, there is no such modality as a surety bond structured by claim.

The risk analysis or prequalification, crucial for policy issuance, requires careful review by the insurer, as this assessment will determine the premium amount. It is important to note that once the policy is issued, it cannot be canceled. This analysis involves administering questionnaires, conducting technical visits to the company's facilities, conducting interviews, consulting credit risk ratings, and surveying companies, financial institutions, accountants, suppliers, customers, and other stakeholders (Russell, 2000).

Through the application of these methods, although in an abstract sense, surety bonds should be customized; in Brazilian practice, standardized policies prevailed until the issuance of SUSEP Circular No. 662/2022, which introduced greater flexibility. The premium (*pretium periculi*) is the consideration paid for sharing risks, even if they do not materialize, and for other services performed by the insurer (Schalch, 2012).

Insurance companies determine the premium price based on operating expenses, the cost of the loss, and the profit allocated to the insurer (Russel, 2000). All of this, combined with the extensive analytical effort applied to risks, ensures that surety insurance is one of the most comprehensive insurance mechanisms for public contracting authorities.

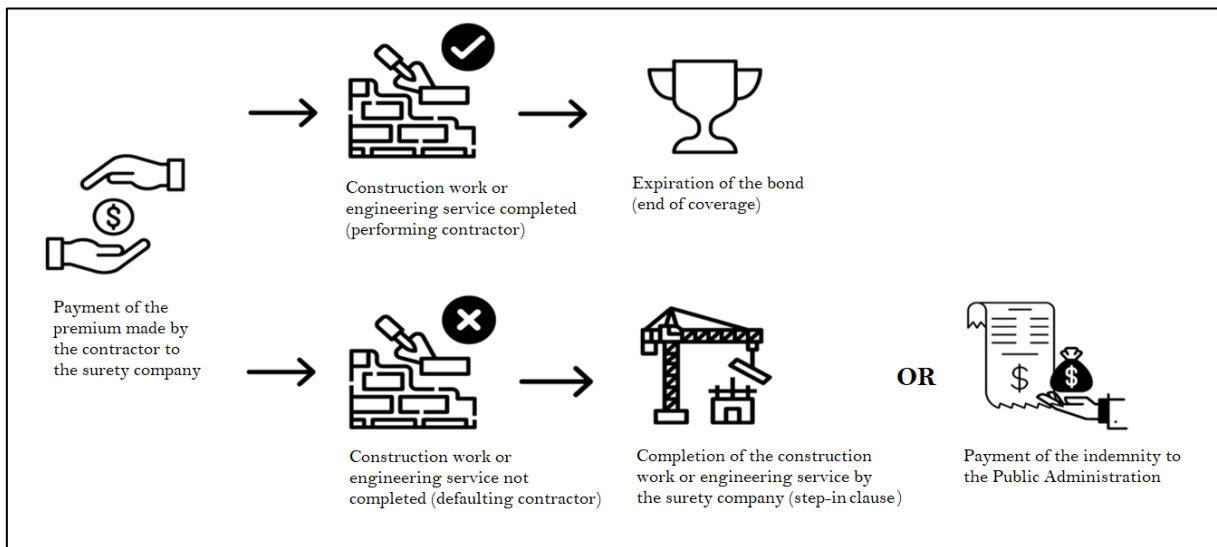
Poletto (2003) explains that the premium value is determined by the cost of the economic and financial analysis performed by the policyholder, the classification assigned to the policyholder by the insurer and reinsurer, and the technical analysis of the subject matter of the main contract. The NLLC also states that the surety bond remains valid even if the policyholder has not made a payment to the insurer. In other words, any default does not lead to the loss of the guarantee.

When the policy term ends (Figure 1), and the policyholder has met their obligations, the guarantee is returned to the policyholder. In the event of the policyholder's default, the

insurer may choose to either pay compensation to the insured or fulfill the obligation under the main contract, thereby exempting itself from paying the compensation.

Figure 1

Surety Bond Flow in Public Works.



Note. Source: Prepared by the authors.

The guarantees involved in administrative contracts serve multiple functions. All of them help create positive incentives for full compliance with the contracted purpose and enable the necessary compensation if certain pre-established risks materialize. However, the surety bond also benefits the contracting authority by transferring a significant portion of transaction costs to the insurer, which then assumes the responsibility.

i. be responsible for performing due diligence procedures when issuing the policy (preventing adverse selection).

ii. monitor and supervise the implementation of the object (mitigating moral hazard).

Therefore, the increase in financial costs (due to the policy premium payment) is justified by the rise in the project's economic return (resulting from effective execution,

schedule adherence, and budget compliance) stemming from improved contractual performance.

Currently, the central regulation for surety bonds in Brazil is SUSEP Circular No. 662/2022, which replaced SUSEP Circular No. 477/2013, both issued by the Superintendência de Seguros Privados (SUSEP). SUSEP Circular No. 662/2022 made significant changes to how surety bonds operate in the country. Standardized formats are no longer used, allowing insurance companies to tailor their contracts to each policyholder's specific needs.

Furthermore, transparency in information between the parties to this type of contract was emphasized to ensure its effectiveness. However, the method for assessing borrowers remains the same: it is based on actuarial technical notes, with the only difference being its use in the risk underwriting policy.

In large-scale contracts, the use of a surety bond with a step-in clause is permitted, allowing the Administration to require this option and, in the event of default, holding the insurer responsible for the execution and completion of the contracted project.

The step-in clause authorizes the insurer to assume performance of the original contract and, for this purpose, to subcontract companies to complete the work, as provided in Article 102, § 1, of Law No. 14,133/2021. Therefore, under the regulatory standard, the insurer has full access to information relevant to the contract's subject matter.

The insurer is permitted to subcontract the execution of engineering works or services, provided the subcontracted company is in good standing. If the insurer takes responsibility for completing the project, it is released from the obligation to pay compensation. However, if it decides not to complete the project, it must pay the amount specified in the policy. Despite recent legal advances, there is still significant criticism of the use of surety bonds in Brazil. The dominant approach in the NLLC seems to favor the interests of market players (contractors and insurers) rather than those of the State (Cotrim & Ryngelblum, 2023).

According to Goldberg (2022, p. 64), it is clear that "if the objective pursued by the contracting authority were to reduce the volume of unfinished works, it would have been appropriate to establish the surety bond as an obligation for the entire Public Administration, not just as a discretion." Furthermore, the percentages stipulated by the legislation, especially when compared with the realities of other countries with low rates of non-execution of public works, seem inadequate to provide an effective contractual guarantee (Wambach & Engelb, 2011; Macedo et al., 2019).

3 METHOD

This research adopts a cross-sectional study design, guided by a mixed-methods approach to data collection and analysis (Creswell, 2007). The study is divided into three stages: 1) literature review (desk review); 2) contract analysis (contract guarantee clauses and review of guarantee documents); 3) analysis of contract amendments. This approach enabled us to describe the types of guarantees used in public works contracts and infer their impact on risks such as delays, cost overruns, and non-performance. It is essential to emphasize that the quality of work is understood as compliance with the technical specifications set out in the project. However, due to limited data availability, this element could not be addressed in this article.

The initial stage, a literature review, involved a systematic search for keywords such as insurance, surety bond, contractual guarantees, public works, and surety bond across SciELO, Google Scholar, and the Sucupira Platform. The works found were integrated into the theoretical framework; however, their limited number emphasizes the scarcity of national academic literature on the topic.

The second stage, contract analysis, was performed using a non-probabilistic sample of 130 public contracts signed by both direct and indirect federal and state contracting authorities, available on public transparency portals. This sample comprises contracts signed between 2018

and 2022 that were intended to provide engineering works and services. The exclusion of municipal public works contracts was another limitation of the study, due to practical constraints in data collection.

For all contracts in the sample, we verified the occurrence of contractual amendments to price and schedule, as well as any cases of partial or total non-performance, to evaluate contract performance. This analysis involved a systematic review of the transparency portals of the federal government and states. However, the incompleteness of the published information required several additional requests through Brazil's Citizen Information Service (e-SIC). This process itself proved to be a significant finding, as it clearly demonstrated the low transparency of public procurement processes.

The following information regarding surety bond policies was analyzed:

- i. type of surety bond;
- ii. subject of the policy;
- iii. situations that result in the termination of the guarantee;
- iv. situations that lead to the loss of the insured's rights;
- v. requirements for execution of the guarantee;
- vi. insurance premium; and,
- vii. involvement of an insurance broker.

Even using the Access to Public Information Law (Law No. 12,527/2011), many requested documents were not provided by the Administration. Therefore, another significant limitation of the research was the limited number of contracts examined and the low response rate from Brazilian public contracting authorities, which resulted in a sample of only 130 cases. This number does not reflect the thousands of engineering works and services contracts carried out by the Federal Government and states during the period analyzed.

4 RESULTS

An initial review of the 130 construction contracts showed a dominance of competitive bidding and lowest-price methods, as well as unit-price and lump-sum contractual arrangements. Those with guarantee clauses displayed standardized wording, although many did not specify the type of guarantee, leaving the choice to the winning bidder. Most contracts examined were governed by Law No. 8,666 of 1993. Only 10 fell under Law No. 13,303/2016, 2 under Bahia state law (Law No. 9,433/2005), and 1 under the Differentiated Contracting Regime (RDC) (Law No. 12,462/2011).

Table 1

Applicable legal framework

Legal nature of the contracting authority	Number of contracts	Applicable statute
Executive agencies	117	Law No. 8,666 of 1993
	10	Law No. 13,303/2016
	01	Law No. 12,462/2011
Independent agencies	02	Bahia state law (Law No. 9,433/2005)
	130	
Total		

Note. Source: Prepared by the authors.

Although Brazil's New Public Procurement Law entered into force during the period analyzed, none of the contracts were formalized under its framework. This absence can be explained by the transition period under the law, during which the contracting authority could choose to apply either the previous or the new legal framework, since compliance with the new law will only become mandatory after December 31, 2025.

Based on this sample, a survey of insurance policies available through transparency portals and e-SICs was conducted. Eight state transparency portals — Acre, Alagoas, Mato Grosso, Rio de Janeiro, Rio Grande do Norte, Roraima, Santa Catarina, and Sergipe — posed significant difficulties in accessing documents. These issues included technical barriers or restrictions on fully exporting documents from the bidding, preliminary, internal, external, and

execution phases, as well as frequent portal unavailability and search filter failures. Therefore, in many cases where it was not possible to obtain documents from the portals as required by law, it was necessary to use information requests (e-SICs).

As shown in Table 2, two bank guarantee policies and 26 surety bond policies were identified. Among these policies, incomplete documents were also found, with varying content and inconsistent determinations in the main contract.

Table 2

Types of guarantees in public works contracts between 2018 and 2022

Destination area of the work	Percentage and type of guarantee	Number of contracts	Number of available insurance policies	Number of amendments to the price	Number of amendments to the schedule
Education	5% Surety Bond	11	06	01	10
	5% Bank Guarantee	01	-	03	04
	5% NI	15	-	10	19
Housing	5% Surety Bond	02	02	01	06
	5% NI	03	-	01	-
Infrastructure	1.5% Surety Bond	01	01	-	-
	3% Surety Bond	03	02	01	04
	3.6% Surety Bond	01	-	-	-
	5% Surety Bond	18	12	10	11
	10% Surety Bond	01	01	-	-
	30% Surety Bond	01	01	*	01*
	5% Bank Guarantee	03	02	02	06
	5% Deposit	01	-	-	-
	3% NI	02	-	01	03
	5% NI	38	-	12**	16**
Health	NI	04	-	03	04
	5% NI	05	-	01**	01**
	NI	01	-	-	-
Sanitation	5% Surety Bond	02	01	-	-
	5% Deposit	01	-	-	-
	5% NI	02	-	-	01
Security	5% Surety Bond	01	-	01	01
	5% NI	09	-	03	04
	NI NI	04	-	-	-
Total	-	130	28	50	91

Note. Source: Prepared by the authors. NI = information not provided. * = amendments presented, but not related to either deadline or price. ** = amendments that simultaneously extended contract value and term.

In 15 cases (60% of the sample), the analyzed contracts used a 5% guarantee percentage. In 4 cases (15% of the sample), lower percentages were used in the infrastructure sector, as permitted by law. Additionally, an unusual case was identified: in 2019, a federal public contract was awarded under the RDC bidding process to a consortium, valued at R\$392,200,000.00, which allowed the consortium to use the surety bond modality, covering 30% of the total contract price. However, the legislation governing the RDC limits guarantees to 5% of the total contract price.

The policies analyzed were governed by SUSEP Circular No. 477/2013, which requires information on the type of surety bond. The types identified were all common: construction, service provision, service provider, and construction. Regarding policy objectives, two types were identified. The first covers compensation for losses resulting from the policyholder's failure to meet their obligations, as well as fines and damages owed to the insured. The second includes the first plus additional coverage for labor and/or social security claims. Therefore, the definition of these objectives is similar to that of a performance bond.

Regarding the content of the policies provided, the requirements for termination and enforcement of the guarantee were examined. Out of all the policies analyzed, 15 (54%) had incomplete information. For the remaining policies, it was possible to confirm consistent standardization of the policy wording. Regarding the requirements that led to the loss of the insured's rights (Table 3), only one federal contract signed in 2022 showed a difference: the addition of requirement 13.

In general, the premiums for surety bonds were relatively low compared to the overall value of the main contracts (Appendix). Additionally, in 20 analyzed policies, the parties involved included not only the construction company, the insurer, and the contracting public authority, but also insurance brokerage firms.

Table 3

Requirements for the operation of surety bond policies.

Requirements for termination of the guarantee	
1.	When the object of the main contract guaranteed by the policy is definitively carried out by means of a document or declaration signed by the insured or return of the policy;
2.	When the insured and the insurer so agree;
3.	When the payment of compensation to the insured reaches the maximum guarantee limit of the policy;
4.	When the main contract is terminated, for modalities in which the policy is linked to a main contract, or when the guaranteed obligation is terminated, for other cases; and
5.	Upon expiration of the term specified in the policy, unless otherwise established in the Special Conditions.
Requirements leading to loss of coverage	
6.	Fortuitous events or force majeure, under the terms of the Civil Code;
7.	Failure to comply with the policyholder's obligations resulting from acts or facts for which the insured is responsible;
8.	Change in the contractual obligations guaranteed by this policy, which have been agreed between the insured and the policyholder, without the prior consent of the insurer;
9.	Intentional unlawful acts or acts due to serious negligence comparable to intent committed by the insured, the beneficiary, or the representative of one or the other;
10.	The insured does not fully comply with any obligations provided for in the insurance contract;
11.	If the insured or their legal representative makes inaccurate statements or omits in bad faith circumstances of their knowledge that constitute an increase in the risk of default of the policyholder or that may influence the acceptance of the proposal, and
12.	If the insured intentionally aggravates the risk.
13.	Occurrence of pandemics, epidemics, or other extraordinary events (including COVID-19), as well as related governmental acts that suspend or interrupt the contractor's obligations.
Conditions for the enforcement of the guarantee	
14.	[Expectation] as soon as the administrative process is opened to investigate possible default by the policyholder, the policyholder must be immediately notified by the insured, clearly indicating the items not complied with and granting him a deadline to regularize the default identified, sending a copy of the notification to the insurer to communicate and record the expectation of loss;
15.	[Claim] The expectation of a loss will be converted into a claim upon communication by the insured to the insurer of the completion of the administrative procedures that prove the policyholder's default, the date on which the claim for the loss will be made official; a series of documents must be presented for the claim.
16.	[Complaint] If the complaint is not formalized, the expectation becomes ineffective; and
17.	[Characterization] Once the insurer has received all documents and, after analysis, the policyholder's default in relation to the obligations covered by the policy is proven, the loss will be characterized, and the insurer must issue a final regulation report.

Note. Source: Prepared by the authors.

5 DISCUSSION

When analyzing the requirements presented in the policies (Table 3), it is clear that how some of them are presented can undermine the effectiveness of the guarantee. Requirement 3

does not specify any measure if the compensation due exceeds the policy limit, which makes the surety bond insufficient if the loss amount is higher. Furthermore, comparing the values of the main contracts with those of the guarantees reveals that the surety bond coverage limit is insufficient (Myeong-Soo, 2020; Deng et al., 2004; Wambach & Engel, 2011). Therefore, in the event of a loss, the policy will not be enough to cover the financial and economic damages suffered by the contracting authority. These findings align with the literature, which also highlights legally set limits as a significant factor that greatly restricts the effectiveness of surety bonds (Goldberg, 2022; Giuffrida & Rovigatti, 2022; Molin Neto, 2022). Under these circumstances, it is reasonable to assume that contractors and/or insurers prefer to pay a reduced compensation rather than fulfill the contract, which is more costly, shifting the multiple losses resulting from non-performance onto the contract authority and society.

Regarding requirement 12, no information was available to provide an objective understanding of the deliberate aggravation of risk. To correctly identify this requirement in administrative contracts, it would be necessary to consider two complementary instruments outlined in the legislation: (i) the risk matrix (Article 18, X, of Law No. 14,133/2021), which includes identifying all associated risks, their impact levels, and the likelihood of occurrence; and (ii) a risk allocation matrix (as outlined in article 22, caput, of Law No. 14.133/21), which specifies the responsibilities of the parties concerning the potential occurrence of risks (Oke & Ogunsemi, 2016; Awad & Fayek, 2010).

Furthermore, the evidence collected on the use of surety bonds — particularly the standardized contractual provisions, uniform operational requirements of the insurance mechanism, and pre-set premium values — indicates that the surety bonds applied in the sampled public works contracts largely follow a claims-made approach (loss-based) and are issued on a mass scale. Therefore, it can be inferred that the necessary negotiation triangulation among the risk, the insured, and the insurer is not being fully achieved. As Russell (2000) notes,

the claims-based insurance model causes the insurer to perform only a superficial assessment of specific risks, limiting itself to adopting mitigating rather than preventive measures. Additionally, mass contracting increases the likelihood of adverse selection, as surety bond contracts are standardized (Schalch, 2012). This practice conflicts with the principle that insurance for complex projects, such as public works, must account for the specificities of both the risk and the policyholder (Talesh & Filho, 2023; Giacomelli & Passalacqua, 2021; Awad & Fayek, 2012). Thus, the massification and claims-based model typical of insurance applied to public works distances the country from international best practices and undermines the implementation of performance-based insurance (Moelmann et al., 2009; Wiedemann & Mercado, 2020).

These findings are significant because they relate to the public contract authorities' limited capacity to effectively oversee contract planning (Marques et al., 2022; Macedo et al., 2019). The literature suggests that performance relies on technical and professional capacity (Lee & Lee, 2025; Romzek & Johnston, 2002). In the Brazilian bureaucratic context, characterized by the capture of public interests by private interests (patrimonialism), it is not surprising that, even though laws have mandated protections in public contracts since at least the enactment of Decree-Law No. 200/1967 (art. 58), the Administration still struggles to make these tools effective (Oliveira, 2023; Pinho & Sacramento, 2015; Gomide et al., 2022; Polga-Hecimovich, 2019).

However, for analytical purposes, it is important to distinguish between deficiencies arising from incompetence and those arising from corruption in the design and implementation of contractual guarantees. In cases of incompetence, failures stem from technical deficiencies. For example, calculation errors during the design of guarantees may result in insufficient coverage and inadequate compensation to offset losses from project suspension or abandonment. Alternatively, during the execution phase, failures such as incomplete designs,

payment delays, or unilateral changes may cause the contractor and/or the insurer to present plausible justifications, as authorized by Article 100 of the NLLC, to attribute liability for non-performance to the Administration and thus avoid paying compensation. Incompetence undoubtedly diminishes the effectiveness of guarantees; however, over the medium- or long-term, organizational learning typically corrects these failures (Nunberg & Pacheco, 2016; Souza, 2013).

On the other hand, in a corruption scenario, the issue is not technical inadequacy but the deliberate intent of government officials who manipulate the design and/or execution of guarantees, under the formal protection of the law, to maximize private revenue extraction at the expense of contractual performance (Boehm & Lambsdorff, 2009; Lambsdorff, 2002). In a corruption context, guarantees will be set at negligible amounts (detached from the real costs of default to the government), making it economically attractive to pay compensation rather than fulfill the contract. Policies will be standardized rather than tailored to the project's and contractor's risks to facilitate the participation of opportunistic firms. Furthermore, it is reasonable to assume that the administration will make decisions that weaken the bureaucracy's technical capacity (aimed at disguising manipulations as mere technical errors) and restrict society's access to documents (to hide distortions) (Vannucci, 2017; Søreide, 2014).

The lack of proper guarantees (a signaling mechanism in the market for public works contracts) leads to adverse selection among construction firms. In bids based solely on the lowest price, the Administration cannot distinguish between opportunistic and non-opportunistic firms, leading opportunistic firms to win contracts because they can offer lower prices (Giuffrida & Rovigatti, 2022; Goldberg, 2022). Over time, non-opportunistic firms that cannot compete effectively will either exit the market or adopt opportunistic behavior, leading to a pooling equilibrium dominated by opportunistic firms (Sobel, 2020). This appears to be the current state of the public works market in Brazil.

Under the Brazilian New Public Procurement and Contracting Law, surety bonds are tools designed to ensure the fulfillment of contractual obligations, including meeting budget, deadline, and quality standards. Ideally, these mechanisms should prevent or at least significantly reduce the risks and losses faced by the contracting authority (Portugal, 2022; Uryn, 2016). However, the research findings indicate that, in practice, surety bonds frequently fail to ensure compliance with deadlines and budgets in public works contracts. Out of 26 public works contracts for which it was possible to analyze the surety bonds, only 4 (14.2% of the sample) were completed, two of which (7.26%) without any extensions of deadline and/or price adjustments. In these 4 completed works, surety bonds were required at 5% or 3% of the contract value. In three of them, the guarantee amount corresponded to 0.02% in two cases and 0.27% in the third. Specifically, regarding the two works completed under contract amendments, the guarantees were not called upon. The survey data show that, on average, each administrative contract involved three contract amendments related to price and schedule. These findings reinforce the conclusion that, as currently used, surety bonds do not provide enough incentives to prevent or address contractual defaults.

With the implementation of the innovations introduced by the Brazilian New Public Procurement and Contracting Law, particularly the ability to set the surety bond at up to 30% of the initial contract value and the inclusion of a proper step-in clause, this trajectory may change (Goldberg, 2022; Paschoa & Rocha, 2020). The flexibility provided by the new legal framework offers an opportunity to align Brazilian practices with international standards, thus improving the effectiveness of surety bonds in risk management and protecting the public interest.

Finally, it is important to acknowledge that while the consulted transparency portals may formally comply with legal requirements regarding publicity and access to information, such compliance is largely superficial. This limitation severely affects the quality of available

research data and hampers the effective exercise of social oversight. Observed weaknesses include difficulties navigating and accessing information (such as identification, download, and format), incomplete and unreliable documents, and a mismatch between the number of published policies and the actual public contracts signed. These issues reduced the feasible sample size and undermined both the quality and usefulness of the data for analysis. As a result, the sample was limited to 130 administrative contracts, of which only 26 were suitable for thorough analysis. In accordance with Article 5 of Law No. 14,133/2021 and Article 30 of SUSEP Circular No. 662/2022, this situation underscores the urgent need for significant improvements in transparency at both the federal and state levels as a crucial step toward enhancing the management of public contracts in Brazil.

6 CONCLUSION

This research aimed to describe the contractual guarantees used by contracting authorities in construction contracts to ensure contract performance in line with the contract requirements, particularly regarding the budget and schedule. Regarding how the research was conducted, significant difficulties were encountered during data collection when accessing public transparency portals, which are legally required to disclose administrative contracts to the public (pro-active transparency).

Even with this limitation, the results from the sample indicate that the most commonly used insurance method in public works contracts is surety bonds. These insurance policies are generally standardized and structured on a claims-made basis, which runs counter to the principle that insurance for complex projects, such as public works, should account for the specific risks and the policyholder's unique situation. Finally, it was observed that only two contracts (7% of the sample) were completed without amendments to price or schedule. Therefore, the research findings suggest that the public authorities should ensure full disclosure

of contract documents, train managers responsible for planning and managing contractual risks, increase policy coverage amounts, and adopt a step-in clause based on project risks. Additionally, it is recommended to adopt customized surety bonds structured on underwriting policies that enable an individualized assessment of the policyholder.

Future research should expand the sample size and assess the effects of new regulations, such as Law No. 14,133/2021 and SUSEP Circular No. 662/2022, on the performance of surety bonds utilized in public works contracts. These studies could examine the influence of risk assessments and the new authorized surety bond percentages. This will enhance the use of surety bonds, thereby strengthening management and improving outcomes in public works contracts in Brazil.

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APPENDIX

Table 4.

Surety bond policy amounts.

Contract Number	Policy area	Price	Insurance coverage amount	% of insurance coverage	Insurance premium	Insurance premium as a % of the total contract value	Execution schedule	Amendments	Contract time extension	Contract price adjustment	Current status ⁺
AL 013/2019	Infrastructure	R\$ 7.149.842,49	R\$ 357.492,13	5%	NI	NI	180 days	1°	365 days	-	In progress
								2°	180 days	-	
								3°	-	R\$ 1.727.856,13	
								4°	90 days	-	
AM 011/2019	Education	R\$ 1.498.810,11	R\$ 74.940,51	5%	R\$ 494,81	0,03%	120 days	1°	60 days	-	Substantial completion
								2°	70 days	-	
								3°	90 days	-	
								4°	180 days	-	
								5°	90 days	-	
								6°	120 days	-	
								7°	240 days	-	
								8°	180 days	-	
								9°	180 days	-	
AM 047/2022	Education	R\$ 1.218.503,26	R\$ 60.925,16	5%	R\$ 1.009,25	0,08%	120 days	-	-	-	Contract rescinded
MT 045/2018	Education	R\$ 4.799.203,70	R\$ 239.960,18	5%	R\$ 2.533,00	0,05%	300 days	-	-	-	NI
MT 013/2019	Infrastructure	R\$ 9.130.696,90	R\$ 378.593,20	4,1%**	NI	-	450 days	-	-	-	In progress
MT 039/2020	Infrastructure	R\$ 2.901.621,17	R\$ 145.081,06	5%	R\$ 400,00	0,01%	120 days	-	-	-	In progress
MT 101/2021	Infrastructure	R\$ 31.741.350,15	R\$ 1.587.067,51	5%	R\$ 7.458,46	0,02%	810 days	-	-	-	Final completion
MT 019/2022	Education	R\$ 7.631.548,16	R\$ 381.577,41	5%	R\$ 8.400,00	0,11%	720 days	-	-	-	NI
PR 123/2020	Infrastructure	R\$ 28.248.913,43	R\$ 1.412.445,67	5%	R\$ 11.300,00	0,04%	540 days (18 months)	1°	-	R\$ 7.019.669,38	NI
								2°	-	R\$ 5.764.698,26	
PR 045/2021	Infrastructure	R\$ 11.290.192,59	R\$ 564.509,63	5%	R\$ 918,68	0,01%	120 days	1°	120 days	-	NI
								2°	-	R\$ 2.298.854,07	
								3°	30 days	-	
PR 008/2022	Infrastructure	R\$ 314.898.549,90	R\$ 31.489.854,99	10%	R\$ 133.044,00	0,04%	960 days (32 months)	-	-	-	In progress
RJ 007/2021	Infrastructure	R\$ 22.759.968,59	R\$ 1.137.998,43	5%	NI	NI	300 days	1°	60 days	-	NI
								2°	30 days	-	
RJ 008/2022	Infrastructure	R\$ 29.002.249,52	R\$ 435.033,74	1,5%	R\$ 3.220,00	0,01%	300 days	-	-	-	In progress
RN 016/2020	Infrastructure	R\$ 817.453,78	R\$ 40.872,69	5%	R\$ 561,92	0,07%	180 days	-	-	-	Suspended
RN 004/2021	Infrastructure	R\$ 150.765,91	R\$ 7.538,29	5%	R\$ 230,00	0,15%	120 days	-	-	-	Contract rescinded
RN 017/2022	Infrastructure	R\$ 1.665.964,04	R\$ 83.298,20	5%	R\$ 1.848,54	0,11%	180 days	1°	90 days	-	NI
RR 069/2020	Infrastructure	R\$ 286.034,78	R\$ 8.581,04	3%	R\$ 764,23	0,27%	90 days	1°	90 days	-	Final completion
	Infrastructure			5%		0,02%		1°	-	-R\$ 0,76	

SC 033/2019		R\$ 28.652.296,5 8	R\$ 1.432.614, 83		R\$ 6.264,26		365 days (12 months)	2° 3°	*** -	*** R\$ 1.653.756,70	Final completion
SC 1072/202 0	Education	R\$ 98.737,57	R\$ 4.936,87	5%	R\$ 220,00	0,22%	120 days	1°	-	R\$ 3.709,10	NI
SP 009/2020	Education	R\$ 84.527,55	R\$ 4.226,38*	*	R\$ 245,10*	*	75 days	-	-	-	NI
TO 023/2019	Housing	R\$ 4.346.114,77	R\$ 373.904,37 *	*	R\$ 4.600,00 *	*	180 days	1° 2° 3° 4°	210 days 180 days 210 days 210 days	- - - -	Final completion
TO 048/2021	Infrastructure	R\$ 3.279.100,66	R\$ 140.000,00	4,3%**	R\$ 517,81	0,02%	180 days	-	-	-	In progress
TO 002/2022	Housing	R\$ 945.151,78	R\$ 42.257,59	4,5%**	R\$ 190,00	0,02%	120 days	1° 2°	120 days 120 days	- -	In progress
Union 821/2019	Infrastructure	R\$ 392.200.000, 00	R\$ 117.660.00 0,00	30%	R\$ 1.943.75 2,71	NI	1080 days	1° 2° 3° 4°	*** *** *** ***	*** *** *** ***	In progress
Union 219/2020	Infrastructure	R\$ 2.597.482,24	R\$ 129.874,11	5%	R\$ 1.300,00	0,05%	180 days	1° 2°	- 90 days	R\$ 649.280,04 -	Suspended
Union 557/2022	Infrastructure	R\$ 221.181.076, 09	R\$ 11.059.053 ,80	5%	R\$ 1.685.09 6,81	0,76%	1440 days	-	-	-	NI

Note. Source: Prepared by the authors. * = updated as of January 2023. NI = not identified. * = Documents relating to the policy endorsement, as the initial policies were not made available. ** = Guarantee percentage different from that established in the contract. *** = No addition to value or term, but changes were made to other contract clauses.

O Seguro de Obras Públicas no Brasil

RESUMO

Objetivo: Descrever as modalidades de garantia adotadas nos contratos de obras públicas no Brasil.

Método: Foi realizado um estudo transversal com base em uma amostra não probabilística de 130 contratos federais e estaduais de obras públicas, celebrados entre 2018 e 2022. Os dados foram obtidos por meio dos portais de transparência e, quando necessário, mediante pedido de acesso à informação (e-SIC).


Originalidade/Relevância: Não há estudos empíricos que descrevam os mecanismos adotados para garantir a execução dos contratos de obras públicas no Brasil.

Resultados: Os resultados indicam que o seguro-garantia é a modalidade de garantia mais utilizada. Contudo, o elevado número de termos aditivos nos contratos analisados sugere que, na forma como é implementada, essa modalidade não é capaz de assegurar o cumprimento de prazos e orçamentos. Observa-se, ainda, a predominância de apólices padronizadas, estruturadas com base em cláusulas de sinistro, que desconsideram os riscos específicos do projeto e do tomador, além de apresentarem valores de cobertura insuficientes para compensar os prejuízos decorrentes do inadimplemento.


Contribuições Teóricas/Metodológicas: Contribui para preencher a lacuna nos estudos sobre a efetividade dos seguros de obras públicas no Brasil.

Contribuições Sociais/para a Gestão: O estudo aponta que os seguros-garantia falham em assegurar o desempenho, exigindo maior transparência nos contratos, capacitação dos gestores e customização para proteger a Administração Pública.

Palavras-chave: Obras Públicas, Gestão de Riscos, Seguros, Seguro Garantia, Contratações Públicas.

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