

BENCHMARKING PPP PROCUREMENT 2017 IN AUSTRALIA¹

Regulatory and Institutional Framework for PPPs	
Does the regulatory framework in your country allow procuring PPPs?	Yes
Yes. If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The focus of this analysis shall be on the Australian state of New South Wales (NSW). Australia does not have a specific legislative framework which regulates PPP procurement. In 2008, however, Infrastructure Australia developed the National PPP Policy and Guidelines (as updated in October 2015) [hereinafter the "National PPP Guidelines"]. These documents have been prepared and endorsed by Infrastructure Australia and the State, Territory, and Commonwealth governments, as an agreed framework for the delivery of PPP projects. All Australian, State and Territory Government agencies now apply the National PPP Guidelines to all PPP projects released to the market. The PPP Guidelines aim to provide a consistent framework that enables public and private sectors to work together to improve public service delivery through private sector provision of public infrastructure and related services. Section 3.1 of the National PPP Policy Framework of these Guidelines provides, "The Policy requires jurisdictions to apply the National PPP Guidelines to the procurement of PPP projects, which are defined as being where:</p> <ul style="list-style-type: none"> • the private sector provides public infrastructure and any related services; and • there is private investment or financing." <p>And Section 1.1 of the National PPP Guidelines Overview provides, "These Guidelines set a framework for the procurement of PPPs on a national basis and apply across State, Territory, and Commonwealth arrangements."</p> <p>Additionally, most individual state and territory governments have their own jurisdictional requirements and guidelines for PPPs. These state and territory guidelines are almost identical across each Australian state and territory and are read in conjunction with the National PPP Guidelines.</p> <p>In terms of NSW precisely, Infrastructure NSW Act 23/2011 established Infrastructure NSW, a governmental entity that oversees PPP projects in NSW. Furthermore, the Infrastructure Financing Unit of the NSW Treasury is the first point of contact for PPPs in NSW, and released the NSW-specific requirements for PPPs in the NSW Public Private Partnerships Guidelines in 2012 [hereinafter "NSW PPP Guidelines"]. And according to Section 2 the NSW PPP Guidelines, "These Guidelines are designed to provide Government agencies, the private sector, advisors and other stakeholders a streamlined guide on the NSW specific requirements for PPP procurement and aim to complement the National Guidelines." Additionally, Section 1 of the NSW PPP Guidelines provides, "all NSW Government agencies, other than State Owned Corporations (SOC), are also subject to the NSW Government Procurement Policy and its associated guidelines."</p> <p>The previously mentioned instruments shall form the regulatory framework on PPPs in NSW, Australia for purposes of this analysis.</p>

¹ The scope of the assessment is limited to infrastructure projects developed by procuring authorities at the national or federal level. However, in the case of Australia, the study focuses on measuring only the State of New South Wales, respectively.

and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	<p>http://infrastructureaustralia.gov.au/policy-publications/public-private-partnerships/national-ppp-policy-guidelines.aspx http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0015/22605/NSW_PPP_Guidelines_2012_Final_Version_14_August_2012_dnd.pdf</p>
Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors? Transportation.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
Water and irrigation	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
Energy generation and distribution	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
Telecom	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
Health	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
Education	<p>No</p>
If yes, please provide the relevant	<p>n/a</p>

legal/regulatory provisions:	
Other	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):	The different government ministries and agencies act as procuring authorities within the scope of their authority. A highway project in NSW would be procured by the Roads & Maritime Services (http://www.rms.nsw.gov.au/).
In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name, and its website (if available):	Infrastructure NSW (http://www.infrastructure.nsw.gov.au/)
If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.	No
PPP policy guidance and capacity building for other public authorities.	Yes
PPP promotion among the public and/or private sectors in national and international forums.	Yes
Technical support in implementing PPP projects.	Yes
Gatekeeping (approval of PPP projects).	No
Procurement of PPPs.	No

Oversight of PPP implementation.	No
Other	No
please specify:	n/a
Preparation of PPPs	Score: 79
Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	In NSW, as noted in Section 3.3 of the NSW PPP Guidelines, prior to procuring a PPP project, the Cabinet must obtain budget funding approval for the project. As well as Cabinet budgetary approval, the Treasurer's approval is required under Section 5A of the Public Authorities (Financial Arrangements) Act 1987 (PAFA Act) to enter into a joint financing arrangement on recommendation of the responsible Minister. Approval under the State Owned Corporations Act 1989 (SOC Act) may also be required to obtain approval of the Shareholding Ministers under Section 20X of the Act which deals with the acquisition and disposal of fixed assets and investments (Sections 3.4 & 3.5 of the NSW PPP Guidelines).
If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 3.1 of the NSW PPP Guidelines, "Government approval will be required at various project milestones throughout the PPP procurement process." Contributors have confirmed that the Treasurer's approval is included in such governmental approval.
Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process?	Yes
If yes, please specify the relevant authority	The Cabinet and NSW Minister for Planning and Infrastructure.

<p>and provide the relevant legal/regulatory provisions (if any):</p>	<p>In terms of Cabinet approval, according to Section 3.1 of the NSW PPP Guidelines, "The Cabinet approval process for funding public infrastructure projects and for PPP delivery of that public infrastructure and related services is detailed in section 3.2. Generally, a Cabinet sub-committee with specific mandates (as outlined in sections 3.2 and 3.3) provide approval at the various milestones. However, Cabinet has discretion over whether a full Cabinet approval is required for a particularly significant PPP transaction milestone(s)." And according to Section 4.2 of the National PPP Guidelines Policy Framework document, governments are required to commit to investing in a particular program or project as a strategic priority prior to its development as a PPP arrangement. This is to ensure that the prioritization of public sector projects is not distorted by the availability of private sector finance (Section 4.2 of the National PPP Guidelines).</p> <p>According to Section 3.7 of the NSW PPP Guidelines under "Environmental and Planning Approvals," "Environmental and development approval requirements are separate from financial and budgetary approval requirements outlined in sections 3.1 to 3.6. Risks associated with gaining development approvals should be appropriately considered at the outset and updated as required.</p> <p>Under the Environmental Planning & Assessment Act 1979 (EP&A Act), the Minister for Planning and Infrastructure provides consent for all State Significant Developments or Infrastructure under Parts 4 and 5.1, respectively. Generally, PPPs are either State Significant Developments or Infrastructure based on project scope and capital investment value."</p>
<p>If yes, is a second approval by the same authority required before signing the PPP contract?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>The environmental and planning assessment process is an ongoing procedure. According to Section 3.7.3 of the NSW PPP Guidelines, "an appropriate level of environmental assessment and community consultation must be undertaken as part of the assessment process. Final environmental and planning approval will not occur until full details of the project to be actually delivered are known." And as for the Cabinet, it approves PPPs for the "investment decision" prior to the procurement process, "procurement decision," (NSW PPP Guidelines Section 3.2), and approval "during the procurement process" at certain stages NSW PPP Guidelines Section 3.3).</p>
<p>Does the government integrate the prioritization of PPP projects with all other public investment project prioritization? (e.g. in the context of a national public investment system)?</p>	<p>Yes</p>

If yes, please provide the relevant legal/regulatory provisions (if any):	While the NSW PPP Guidelines do not explicitly address PPP project prioritization, Section 2.1 of the National PPP Guidelines provides, "The objectives of the National PPP Policy Framework are to: encourage private sector investment in public infrastructure and related services where value for money for government can be clearly demonstrated."
If yes, which of the following options best describes the way your government prioritizes PPP projects? (Please select only one). The regulatory framework provides for the inclusion of PPPs in the national public investment system and/or details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	Yes
If yes, please specify:	There is no mandatory project prioritization system in Australia, with each jurisdiction making assessments with respect to infrastructure priorities in its own jurisdiction. However, Infrastructure Australia maintains and periodically updates the 'Infrastructure Priority List' for nationally significant infrastructure: http://infrastructureaustralia.gov.au/projects/infrastructure-priority-list.aspx
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	No
The regulatory framework does not include any provisions.	No
Other	No
please specify:	n/a
Among the PPP projects procured within the last two (2) years, how many	All of the projects.

<p>of them were prioritized along with all other public investment projects? Please elaborate:</p>	
<p>Which of the following assessments are conducted when identifying and preparing a PPP? (check all that apply): 10.1. Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the project)</p>	<p>Yes</p>
<p>Relevant legal/regulatory provision (if any)</p>	<p>Sections 3.1.2 of Volume 1 of the National PPP Guidelines on "Procurement Options Analysis" and 4.3.3 of the NSW PPP Guidelines discuss the socio-economic assessments in the context of the Public Sector Comparator, and addresses social and economic infrastructure in this context.</p>
<p>Is there a specific methodology?</p>	<p>Yes</p>
<p>If yes, elaborate.</p>	<p>Sections 3.1.2 of Volume 1 of the National PPP Guidelines on "Procurement Options Analysis" and 4.3.3 of the NSW PPP Guidelines discuss the socio-economic assessments in the context of the Public Sector Comparator, and addresses social and economic infrastructure in this context. Agencies are required to undertake appropriate cost-benefit analysis in accordance with the NSW Treasury Guidelines.</p>
<p>Affordability assessment, including the identification of the required long term public commitments (explicit and implicit)</p>	<p>Yes</p>
<p>Relevant legal/regulatory provision (if any)</p>	<p>According to Section 4.3.3 of the NSW PPP Guidelines provided, "To maintain its usefulness as a tool, the PSC will be: accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement." And Section 3.1.1 of the National PPP Guidelines provides that the key value for money drivers for PPP delivery include: whole-of-life costing. Full integration, under the responsibility of one party, of up-front design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs. This delivers improved efficiency through whole-of-life costing as design, and construction become fully integrated up-front with operations and asset management."</p>

Is there a specific methodology?	No
If yes, elaborate	n/a
Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Section 4.3.3 of the NSW PPP Guidelines covers risk assessment and provides, "To maintain its usefulness as a tool, the PSC will be: <ul style="list-style-type: none"> • accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement." And Section 3.1.1 of the National PPP Guidelines provides that the key value for money drivers for PPP delivery includes: whole-of-life costing. Full integration, under the responsibility of one party, of up-front design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs. This delivers improved efficiency through whole-of-life costing as design and construction become fully integrated up-front with operations and asset management."
Is there a specific methodology?	Yes
If yes, elaborate	Section 3 of Volume 1 of the National PPP Guidelines sets out risk assessment components within the value for money assessment and PPP model delivery.
Financial viability or bankability assessment.	Yes
Relevant legal/regulatory provision (if any)	Section 4.3.3 of the NSW PPP Guidelines covers financial viability or bankability assessment and provides, "To maintain its usefulness as a tool, the PSC will be: <ul style="list-style-type: none"> · accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement; · subject to sensitivity testing and scenario analysis; and · sufficiently flexible to allow new information to be incorporated as it comes to light."
Is there a specific methodology?	No
If yes, elaborate	n/a
Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives	Yes
Relevant legal/regulatory provision (if any)	Section 4.3.3 of the NSW PPP Guidelines provides, "To maintain its usefulness as a tool, the PSC (Public Sector Comparator) will be: <ul style="list-style-type: none"> · accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement."
Is there a specific methodology?	Yes
If yes, elaborate	Sections 2 and 3 of Volume 1 of the National PPP Guidelines set out components for value for money assessments and the PPP model delivery.

Market assessment (showing evidence of enough interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	According to Section 4.3.1 of the National PPP Guidelines, "analysis of market capability and appetite. Government requires reliable data on which to base a decision on whether to offer a project to the market as a PPP project, or whether to deliver it by traditional means. This decision, which is based on practical grounds, needs to examine the issues of: - whether private parties have the capacity to deliver the project and related services; and - whether private parties have the appetite, or motivation to do so, which may depend on the prevailing market conditions."
Is there a specific methodology?	No
If yes, elaborate	n/a
Among the PPP projects procured within the last two (2) years, for how many of them were all of the required assessments conducted? Please elaborate:	All of the projects.
Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide examples):	n/a
Have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned	Practice

standards are available or provide an electronic copy of them:	
Does the procuring authority obtain the permits necessary to develop and operate the PPP project before calling for tenders in any of the following areas? Environmental permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Urban and zoning permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide explanation):	n/a
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP	Yes

project (if any)? Right of way	
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide explanation):	n/a
Does the regulatory framework establish any exceptions where the preparation process described above does not apply or allows for a "fast track" procedure?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
What is the average number of calendar days that the procuring authority spends on each of the following activities to prepare a PPP project? Conducting the required assessments:	398
Obtaining the required approvals from other relevant authorities:	311
Preparing the draft PPP contract:	258
Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:	258
PPP Procurement	Score: 90
Are the bid evaluation	Yes

committee members required to meet specific qualifications?	
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	The NSW PPP Guidelines provide in Section 4.1.2 that the composition of the Steering Committee is to include the procuring agency, an experienced officer from NSW Treasury and any representatives from other agencies or independent advisers as jointly approved by Treasury and the procuring agency or by Cabinet.
If no, please elaborate (provide examples):	n/a
If yes, which of the following options best describes the required qualifications of the committee members? (Please select only one). The regulatory framework details the qualifications required and/or the specific membership of the bid evaluation committee.	No
If yes, please specify:	n/a
The regulatory framework requires generally sufficient qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.	Yes
The regulatory framework does not include any provisions.	No
Other	No
please specify:	n/a
Does the procuring authority issue a public procurement notice of the PPP?	Yes

If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	The National PPP Guidelines in Section 3.5 of Volume 2 provides that the private sector should be notified about the PPP and there should be engagement with the private sector.
If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	The notice is published in the relevant procuring authority's website, including: it's http://www.rms.nsw.gov.au/
Does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
and the time in calendar days :	n/a
Do the tender documents detail the stages of the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Table 3.2 of the NSW PPP Table, "Once Cabinet has approved the project funding and the PPP procurement, the procuring agency should: <ul style="list-style-type: none"> • update the business case, including economic and financial appraisals; • determine the project scope and management plan, including: - related services to be privately provided, - risk allocation matrix, - timetable for procurement showing key milestones, and - probity plan; Details of the procurement process, which also include the proposed timeframes for the project and dates for all key milestones, would be provided in the expression of interest (EOI) according to Section 4.1.1 of the National PPP Guidelines Volume 2 "Practitioners' Guide."
If no, please elaborate (provide examples):	n/a
Does the procurement process include a pre-qualification stage to select a number of qualified bidders to present the full proposal?	Yes
If yes, please provide the relevant	According to Section 4.3 of the NSW PPP Guidelines, "The RFP phase involves the call for detailed proposals from shortlisted bidders and the evaluation of submissions to

legal/regulatory provisions (if any):	select a preferred bidder." Section 4.5 of the National PPP Guidelines provides the same content.
If yes, do the tender documents specify the prequalification criteria in order to make them available to all of the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The previously mentioned Table 3.2 of the NSW PPP Guidelines and Section 4.1.1 of the National PPP Guidelines would apply.
Among the PPP procurement processes conducted within the last two (2) years that had a prequalification stage, how many of them included prequalification criteria in the tender documents? Please elaborate	All of the projects.
Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 4.3 of Volume 2 of the National PPP Guidelines provides that a briefing session can be held for interested parties to ask questions of the EOI and to reiterate the requirements of the government. All questions are to be structured around RFP clarification questions and the feedback is to be clear, equitable and relate to the RFP. Section 4.3.2 of the NSW PPP Guidelines confirms this and further provide that the process is intended to be an "interactive tender process."
If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?	Yes
If yes, please provide the relevant	Section 4.3 of Volume 2 of the National PPP Guidelines provides that a briefing session can be held for interested parties to ask questions of the EOI and to reiterate the requirements of the government. All questions are to be structured around RFP

legal/regulatory provisions (if any):	clarification questions and the feedback is to be clear, equitable and relate to the RFP. Section 4.3.2 of the NSW PPP Guidelines confirms this and further provide that the process is intended to be an "interactive tender process."
Among the PPP procurement processes conducted within the last two (2) years where questions were submitted, in how many were the questions and clarifications disclosed to all of the potential bidders? Please elaborate:	Most of the projects.
Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Contributors have provided that the "interactive tender process" would acknowledge more elaboration than only questions and clarifications. Rather, it creates greater dialogue that includes holding workshops as referred to in Sections 4.3.2 of the NSW PPP Guidelines and Chapter 14 of the National PPP Guidelines Volume 2 and its Appendix E.
If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Among the PPP procurement processes conducted within the last two (2) years where any other type of dialogue was conducted, in how many was the	n/a

<p>content and the result of the dialogue disclosed to all of the potential bidders? Please elaborate:</p>	
<p>Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Section 5.1.1 of the National PPP Guidelines Volume 2, the proposal schedules should include, "Financial: Ø details of the proposed funding structure and level of commitment." Section 4.1.1 of the same Volume provides that private partners provide, "Commercial & financial information: Ø details of the EOI respondent, including details of each participating organization if it is a consortium, the formal nature of their agreement to bid as a consortium and indicative terms of arrangements of any special purpose vehicle; Ø details of the proposed funding structure; Ø demonstration of an understanding and acceptance of the proposed commercial principles/risk allocation; Ø details of the financial position of each consortium member and proposed parent backing, if relevant."</p>
<p>If no, please elaborate (provide examples):</p>	<p>n/a</p>
<p>Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Section 5.3.4 of the National PPP Guidelines, "The evaluation process and report should also include a confirmation from the Probity Practitioner that the evaluation process was undertaken in accordance with the evaluation plan and probity plan."</p>
<p>Among the PPP procurement processes conducted within the last two (2) years, in how many of them was the evaluation of the bidders conducted</p>	<p>Most of the projects.</p>

in accordance with the criteria stated in the tender documents? Please elaborate:	
In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>There are no specific provisions addressing a competitively procured project where only one conforming tender is received. In these situations, relevant policies would nonetheless require that the usual value for money considerations be taken into account, including an assessment of the sole tender against the PSC. Each jurisdiction in Australia also maintains policies for 'sole source' procurement - i.e. where there is no competitive tender process, usually due to the fact that there is one qualified market participant (see e.g. in NSW: the NSW Procurement Guidelines - 'Complex Market Engagement Methods'). However, sole source procurement is rare for PPPs. In fact, according to our contributors NSW Government has not had this experience in the last 2 years.</p>
If yes, what of the following options best describes the way the procuring authority deals with sole proposals? (Please select only one). The regulatory framework details a specific procedure that the procuring authority must follow before awarding a PPP contract where only one proposal is submitted.	<p>No</p>
Please specify:	<p>n/a</p>
The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	<p>Yes</p>

The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.	No
The regulatory framework does not include any provisions.	No
Other	Yes
please specify:	n/a
In practice, what is the average number of calendar days between the initial publication of the PPP public procurement notice and the award of the PPP? Number of calendar days:	410
Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	According to Section 6.4 of the National PPP Guidelines Volume 2, "It is common practice for a public announcement of the contract and the successful bidder to be made when contracts have been executed."
If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	Website of the relevant government agency/procurement authority, including http://www.rms.nsw.gov.au/ . And tenders.nsw.gov.au
Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 5.4 of Volume 2 the National PPP Guidelines states that all bidders must be provided with an evaluation of their bids and an overview of the deficient parts of their proposal in a report. Section 12.3 of the same Volume also provides that the evaluation report should arrive at a joint view from the separate evaluation teams (e.g. finance/commercial, design, service delivery) on the overall ranking of bids and a recommendation of which bidder should be the preferred party. The report should

	discuss the rankings within each area of valuation and the basis for the procurement team's agreement on the preferred bidder, within a debriefing process.
If no, please elaborate (provide examples):	n/a
If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 5.4 and Section 17 of Volume 2 the National PPP Guidelines provides that all bidders must be provided with an evaluation of their bids and an overview of the deficient parts of their proposal in a report. Section 12.3 of the same Volume also provides that the evaluation report should arrive at a joint view from the separate evaluation teams (e.g. finance/commercial, design, service delivery) on the overall ranking of bids and a recommendation of which bidder should be the preferred party. The report should discuss the rankings within each area of valuation and the basis for the procurement team's agreement on the preferred bidder, within a debriefing process.
Does the regulatory framework restrict or regulate in any way negotiations with the selected bidder between the award and the signature of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to Section 4.4.1 of the NSW PPP Guidelines, "Before seeking Cabinet approval to begin contract negotiations with one or more proponent, the agency together with NSW Treasury, must develop the 'negotiation parameters' schedule as per Appendix 3. Any departures from the Commercial Principles underpinning the RFP documentation should be explained. This will inform Cabinet of the type of commercial deal the agency wants to pursue with the private sector. The terms and conditions submitted to Cabinet must outline the scope of the project and areas for final negotiations, as well as any conditions that must be satisfied for the Government to support the project." These negotiations precisely refer to negotiations between the agency and the private partner.
Among the PPP procurement processes conducted within the last two (2) years, in how many of them were the terms and	Most of the projects.

conditions changed between the award and the signature of the PPP contract? Please elaborate:	
Does the procuring authority publish the PPP contract?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	As noted in Section 5.1 of the National PPP Guidelines and expanded on in Section 5.1 of the NSW PPP Guidelines, all NSW PPPs are subject to Ministerial Memorandum No. 2007-01 Public Disclosure of Information Arising from NSW Government Tenders and Contracts (M2007-01) and the Government Information (Public Access) Act 2009 (GIPA), which set out specific disclosure requirements arising from NSW Government tenders and contracts. Under the GIPA, for example, contracts are to be disclosed to the public 45 working days after the contract becomes effective. The NSW PPP Guidelines (in Section 5.3) require that a contract summary be tabled in Parliament. Contract summaries are a summary of a project's contracts, but do not have any independent legal status. In addition, the NSW Guidelines state that amendments to contracts that have the effect of changing the relevant contract summary information undergo the same public disclosure requirements, including an audit by the Auditor-General of an updated contract summary.
If yes, is it published online?	Yes
If yes, please specify the website:	http://www.treasury.nsw.gov.au/ppp/nsw_projects and Published on the website of the relevant government agency/procuring authority including http://www.rms.nsw.gov.au/
Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a "fast track" procedure?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Unsolicited proposals	Score: 75
Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)	Yes
If yes, please provide the relevant	The National PPP Guidelines provide that unsolicited proposals are accepted to provide a source of innovative ideas about how to improve the delivery of government services.

legal/regulatory provisions:	(Section 3.6 of Volume 6 of the National PPP Guidelines). The NSW Government also published a Guide for Submission and Assessment of Unsolicited Proposals in January 2012 (updated in February 2014) [hereinafter "NSW Unsolicited Proposals Guide"] which outlines the Guiding Principles, Roles and Responsibilities of the Government and the Process for receipt and consideration of unsolicited proposals.
If yes, please specify, to the best of your knowledge, the percentage of PPP investments in your country approved as unsolicited proposals during the last five (5) years:	10
Does the procuring authority conduct an assessment to evaluate unsolicited proposals?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	This is detailed in Section 5 of the NSW Unsolicited Proposals Guide. It involves an initial assessment of the bid, and if warranted, proceeds to request a detailed proposal. If the government approves this proposal, it then requests a Binding Offer and, if accepted, enters into the contract.
If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	NSW Unsolicited Proposals Guide provides in Section 3.3, that proposals are to be assessed against the following criteria: (i) uniqueness; (ii) value for money; (iii) whole-of-government impact, including opportunity cost; (iv) return on investment; (v) capability and capacity of proponent to deliver the proposal; (vi) affordability and (vii) appropriate risk allocation. Additional assessment criteria relevant to a particular proposal might also be applied.
If yes, which of the following options best describes how unsolicited proposals are evaluated against existing government priorities? (Please select only one). The regulatory	Yes

<p>framework details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	
<p>If yes, please specify:</p>	<p>The NSW Unsolicited Proposals Guide Section 3.3 would provide a basis. As such, proposals are to be assessed against the following criteria: (i) uniqueness; (ii) value for money; (iii) whole-of-government impact, including opportunity cost; (iv) return on investment; (v) capability and capacity of proponent to deliver the proposal; (vi) affordability and (vii) appropriate risk allocation. Additional assessment criteria relevant to a particular proposal might also be applied.</p>
<p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	<p>No</p>
<p>The regulatory framework does not include any provisions.</p>	<p>No</p>
<p>Other</p>	<p>No</p>
<p>please specify:</p>	<p>n/a</p>
<p>Among the unsolicited proposals approved within the last two (2) years, how many of them were a part of the existing government priorities? Please elaborate:</p>	<p>All of the projects.</p>
<p>Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	<p>Yes</p>
<p>If yes, please provide the relevant</p>	<p>Part 2 of the NSW Unsolicited Proposal Guide provides that the NSW Government may subject unsolicited proposals to the market if the proposal does not satisfy the</p>

legal/regulatory provisions (if any):	assessment criteria set out in the Guide but the Government sees merit in the proposal.
Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
and the time in calendar days:	n/a
Does the procuring authority use any of the following mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer.	No
Developer's fee (reimbursing the original proponent for the project development cost).	No
Bid bonus.	No
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No
Other	No
please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	Score: 80

Has the procuring or contract management authority established a system to manage the implementation of the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any)	<p>Broadly outlined in Section 4.3.5 of the National PPP Guidelines Overview and expanded upon in Appendix H of Volume 2 of the National PPP Guidelines (Contract Management Guidance) and Section 4.5.1 of the NSW PPP Guidelines, where, "After contract execution, management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements."</p>
If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>National PPP Guidelines, Volume 2 Practitioner's Guide, Section 7, 8.7 and Appendix H provide a basis. And according to Section 4.5.1 of the NSW PPP Guidelines, "After contract execution, management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements."</p>
Participation of the members of the PPP contract management team in the PPP procurement process.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 4.5.1 of the NSW PPP Guidelines, "For many projects, it may be useful for the procurement steering committee to oversee the implementation of the project during the initial delivery phase (i.e. during construction and at least the first two years of operations)."</p>
Possibility to consult with PPP procurement experts when managing the PPP contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Practice</p>
Elaboration of a PPP implementation manual or an	<p>No</p>

equivalent document.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other	No
please specify:	n/a
If there is a contract management team, in how many of the PPP projects procured within the last two (2) years did the management system and tools fully inform the contract management team? Please elaborate:	All of the projects.
Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The evaluation system is broadly outlined in Section 4.3.5 of the National PPP Guidelines Overview and expanded upon in Appendix H of Volume 2 of the National PPP Guidelines (Contract Management Guidance) and Section 4.5.1 of the NSW PPP Guidelines, where, "After contract execution, management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements."
If yes, which of the following tools does it include (check all that apply)? PPPCo must provide the procuring or contract management authority with periodic operational and financial data.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice

The procuring or contract management authority must periodically gather information on the performance of the PPP contract.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
The procuring or contract management authority must establish a risk mitigation mechanism.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Appendix H.3 of the National PPP Guidelines Volume 2, "As risk is a dynamic concept, contract management must evolve with the delivery of the contracted services throughout the project lifecycle."
The PPP contract performance information must be available to the public.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other	No
please specify:	n/a
Is PPP contract performance information publicly available online?	No
If yes, please specify the website:	n/a
Does the regulatory framework expressly regulate a change in the structure (i.e. stakeholder composition) of PPPCo?	Yes
If yes, please provide the relevant	Sections 29 of Volume 3 and 28 of Volume 7 of the National PPP Guidelines regulate any change in ownership, control, or structure of the private partner. The private party

legal/regulatory provisions:	must obtain government consent. This is also grounded on Section 4.5.3 of the NSW PPP Guidelines and circular NSWTC 15-16 published on 25 August 2015 by the NSW Treasury which states that any material contractual or commercial changes to existing PPP projects must first be approved by the NSW Treasury.
If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in PPPCo during an initial period (e.g. construction and first five years of operation).	Yes
If yes, please provide the relevant legal/regulatory provisions:	Practice
In case of a change affecting the controlling interest, the replacing entity must meet the same technical qualifications as the original operator.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Practice
Flexibility to substitute non-controlling interest after the initial period.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Practice
Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant	According to Section 19 of the National PPP Guidelines Volume 3, "Government may initiate Modifications to the facility and the Services Specifications at any time during

legal/ regulatory provisions:	<p>the contract term. The cost of government-initiated Modifications will be borne by government. The private party may initiate Modifications to the facility at any time during the contract term. Government will have complete discretion as to whether and on what basis it accepts a Modification initiated by the private party. If accepted, the Modification will be funded by the private party. Where Modifications result in net savings due to overall improvements, innovations, time or cost savings, those net savings will be shared with government." According to Section 19.1 of the National PPP Guidelines Volume 3, "Modifications" will be defined on a project by project basis but will generally include:</p> <p>(i) in the design and construction phase, changes to the Design Requirements; and (ii) in the operating phase, changes to the facility or the Contracted Services." Section 18.1 of the same Guidelines in Volume 7 provides a similar component.</p> <p>Section 18.1 of the same Guidelines in Volume 7 provides a similar component.</p>
If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>Practice</p>
A change in the risk allocation of the contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>Practice</p>
A change in the investment plan or duration of the contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>Practice</p>
Does the regulatory framework expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all	<p>Yes</p>

that apply): Force Majeure.	
If yes, please provide the relevant legal/regulatory provisions:	<p>Sections 21 of Volume 3 and 20 of Volume 7 of the National PPP Guidelines apply to NSW in this regard, which provide that in some jurisdictions, Force Majeure Events are defined as Relief Events which last for longer than a specified period. In other jurisdictions, Force Majeure Events are defined as a limited category of events of exceptional severity which are outside the control of either party and prevent the private party from performing all or a material part of its non-financial obligations under the project agreement.</p> <p>If a Force Majeure Event occurs, the private party (and government) will receive relief from obligations as is reasonable and in accordance with the principles set out in this Chapter.</p>
Material Adverse government action.	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Contributors provided that this would fall under the scope of "Relief Events," where Section 16 of the National PPP Guidelines Volume 3 provides a list that includes, "(iii) an act or omission by government or relevant government-related parties at the facility/site (but only in their capacity as a contracting party) other than:</p> <ul style="list-style-type: none"> · the performance of the core services or any act or omission authorized or permitted under the Project Contracts; or · an act or omission which is a reasonably foreseeable consequence of the performance of the core services⁴⁹ or other authorized/permitted acts or omissions; <p>(iv) failure by an authority (including a utility provider) to carry out works or provide services which it is obliged to carry out or provide (noting that some jurisdictions may limit entitlement to Relief to where the relevant authority has not acted in accordance with its statutory powers);</p> <p>(v) any blockade or embargo (noting that some jurisdictions may limit this to a site specific blockade or embargo)."</p>
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>According to Section 20 of the National PPP Guidelines Volume 3 under "Change of Law," "Change in Law" encompasses the following occurrences after the execution of the project agreement:</p> <ul style="list-style-type: none"> (a) the enactment of new Laws; (b) the amendment, repeal or change of any Law; and (c) in some jurisdictions, any judgment of a relevant court of Law which changes a binding precedent. <p>For these purposes, "Law" means legislation, subordinate legislation, rules and regulations and policies or guidelines with which the private party is legally required to comply."</p>
Refinancing.	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Sections 32 of Volume 3 and 31 of Volume 7 of the National PPP Guidelines and Section 4.5.2 of the NSW PPP Guidelines provide a basis.</p> <p>As per the National Guidelines, all re-financings other than those contemplated at financial close will require consent by Cabinet. In NSW the Treasurer (under the PAFA Act) is also required to provide consent for any re-financings not included in the base case financial model.</p> <p>Where there are no contractual provisions otherwise, any re-financing gains are to be</p>

	<p>shared between government and the private party, on a 50:50 basis, provided the projected equity return at the time of the re-financing (taking into account any refinancing) is above that reflected in the original base case financial model.</p> <p>In NSW, any proposed re-financing should not result in a debt balance, at any time between the date of the refinancing and the end of the concession, greater than the projected debt balances in the original base case financial model. The transaction costs related to future debt refinancing should be appropriately allocated in the original base case financial model.</p>
Other.	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
Does the regulatory framework establish a specific dispute resolution mechanism for PPPs?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions	In Sections 31 of Volume 3 and 30 of Volume 7 of the National PPP Guidelines, the dispute resolution processes are designed to provide resolution of matters in dispute in a speedy and non-litigious, but fair and independent manner.
If yes, which of the following options best describes the dispute resolution mechanism for PPPs? (Please select only one). The regulatory framework details specific resolution mechanisms for disputes arising during the implementation of the PPP.	Yes
If yes, please specify:	Options include establishing a panel for the resolution of disputes, appointing an independent expert and referring matters to arbitration, according to Sections 31 of Volume 3 and 30 of Volume 7 of the National PPP Guidelines.
The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.	No

<p>The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.</p>	<p>No</p>
<p>Other</p>	<p>No</p>
<p>please specify:</p>	<p>n/a</p>
<p>Does the regulatory framework allow for the lenders to take control of the PPP project (lender step-in right) if either PPPCo defaults or if the PPP contract is under threat of termination for failure to meet service obligations?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Contributors provide that this would be detailed in the PPP agreement, but it would find ground based on Sections 25.1.1 of Volume 3 and 24.1.1(b) of Volume 7 of the National PPP Guidelines, where, subject to the financiers' rights under the funder's direct agreement, if a Default Termination Event occurs, government has the right to terminate the project agreement without any cure period being given to the private party.</p>
<p>If yes, which of the following options best describes the lender step-in right? (Please select only one). The regulatory framework expressly regulates the lender step-in rights.</p>	<p>No</p>
<p>If yes, please specify:</p>	<p>n/a</p>
<p>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</p>	<p>No</p>
<p>The regulatory framework prescribes that a</p>	<p>Yes</p>

direct agreement should be signed with the lenders.	
Other	No
please specify:	n/a
Does the regulatory framework expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify:	The grounds are: 1. Termination for Contractor Default; 2. Voluntary Termination by Government; 3. Termination due to Force Majeure.
and provide the relevant legal/regulatory provisions:	Sections 25 of Volume 3 and 24 of Volume 7 of the National PPP Guidelines, and briefly mentioned in Section 5.3 of the NSW PPP Guidelines.
If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to Sections 25.6 of Volume 3 and 24.3 of Volume 7 of the National PPP Guidelines, (a) Upon termination, the private party will be entitled to compensation in accordance with the principles set out in Chapter 26 (Termination Payments). (b) The rights and obligations of the parties to the project agreement (or other agreements that may be relevant to include here, such as any lease between the private party and government) will cease except for: (i) any accrued rights and obligations; and (ii) any rights or obligations which are expressed to continue after termination.
Are you aware of any reforms (in practice or in laws, regulations, policies, etc.) related to PPPs that: Took place in 2015, are ongoing and/or are planned to be adopted BEFORE June 1, 2016?	No
Please describe:	n/a
Are you aware of any reforms (in practice or in laws, regulations, policies, etc.)	No

related to PPPs that: 50.2. Are ongoing and/or are planned to be adopted AFTER June 1, 2016?	
Please describe:	n/a