

BENCHMARKING PPP PROCUREMENT 2017 IN BENIN

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:	There is no specific PPP Law in Benin, but a project of law is being prepared. The general principles of contract law as well as Law No. 2009 -02 dated August 7, 2009 (hereinafter the PP Law) regulating public procurement and delegation of public services in the Republic of Benin apply to PPPs in Benin. Additionally, Decree No 2014-349 of 2 June 2014 concerning guidance note on PPP completes the existing regulation for public service delegations, as indicated in its Section 1.2.
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	www.ARMP.bj
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.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Water and irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Energy generation and distribution	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Health	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Education	No
If yes, please provide the relevant legal/regulatory provisions:	n/a

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):	<p>Pursuant Section 3(1)(2) of Decree No 2014-349 of 2 June 2014 concerning guidance note on PPP: The legal entities that may enter into public-private partnerships as a contracting authority are: The State, local authorities, public establishments, companies with majority public financial participation, state companies, public law organizations as defined in Directive No 04/2005 / CM / UEMOA, the associations formed by one or more legal entities of public law.</p> <p>Note: The use of websites is still not very common in Benin because of the lack of a defined national domain, maintenance problems of administration. The main administrations with sites is linked to the following site: http://www.gouv.bj/</p>
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):	<p>Section 5(1)(2) of Decree No 2014-349 of 2 June 2014 concerning guidance note on PPP provides for a support cell in Public Private Partnership (Cellule d'appui au Partenariat Public-Privé: CAPPP) that is an organization, expert in the implementation structure of the institutional framework and management of PPP. It is attached to the Presidency of the Republic. Its effectiveness relies on a multidisciplinary organization (economists, financial, legal, administrative, etc.). The CAPPP is a center of knowledge and expertise for the implementation of PPP projects. In this respect , it:</p> <ul style="list-style-type: none"> - Advises the government on all matters relating to PPP - Provides a catalog of projects eligible for PPP - Provides assistance in achieving the socio-economic studies for projects outside the catalog and feasibility studies, - Issues an opinion on the socio-economic studies and externalities and feasibility studies, - Assists in the contract award process, and - Supports the carrying organisms in the management of contract enforcement.
If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.	Yes
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.	No
Technical support in implementing PPP projects.	Yes

Gatekeeping (approval of PPP projects).	No
Procurement of PPPs.	No
Oversight of PPP implementation.	Yes
Other	No
please specify:	n/a
Preparation of PPPs	Score: 31
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):	<p>The Council of Ministers is the supreme body of decision making in the implementation process of the PPP projects: It approves key stages of the PPP process; and it authorizes the signing of contracts.</p> <p>But more specifically the Organic Law 2013-14 of September 27, 2013 concerning finance laws provides that: for public-private partnership contracts, the State entrusts a third party financing, construction, maintenance or operation of public investment operations, from the year when the contracts are concluded. PPPs are included in the investment expenditure covered by the Finance Act. This ensures the approval and the parliamentary control, and should ensure the quality and the competence of the authorizing Minister of Finance (or his delegate in these functions- Article 69, 70, 71 OBL) for prior approval.</p>
If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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	(1) The Support Unit for Public-Private Partnerships (La Cellule d'Appui aux Partenariats Public-Privé) attached to the Presidency of the Republic and (2) The Public Contracts Control National Directorate acting under the supervision of the Minister in charge of Finance .
and provide the relevant legal/regulatory provisions (if any):	(1) According to Section 5(1) (2) of the Decree No 2014-349 of 2 June 2014 concerning the guidance note on PPP, the Support Unit for Public-Private Partnerships (La Cellule d'Appui aux Partenariats Public-Privé) is an expert organization is the implementation structure of the institutional framework and management of PPP. It is attached to the Presidency of the Republic. Its effectiveness relies on a multidisciplinary organization

(economists, financial, legal, administrative, etc.). The CAPPP is a center of knowledge and expertise for the implementation of PPP projects. In this respect, it:

- Advises the government on all matters relating to PPP,
- Provides a catalog of projects eligible for PPP,
- Provides assistance in achieving the socio-economic studies for projects outside the catalog and feasibility studies,
- Issues an opinion on the socio-economic studies and externalities and feasibility studies,
- Assists in the contract award process,
- Supports the management of contract enforcement.

(2) Pursuant to Article 11 of Law No.2009-02, a National Directorate of Public Contracts Control (DNCMP) was established, under the supervision of the Minister in charge of finance. It is the central body of procurement control. As such, it ensures the control of procurement operations beyond the threshold mentioned in paragraph 1 of the following Article. A Departmental Public Contracts Control (DDCMP) is created in each department and under the supervision of the National Directorate Control of Public Procurement. A Procurement Monitoring Unit is created in every ministry, in every institution and in decentralized bodies of the state. The rules establishing procedures for the establishment, organization and operation of the National Directorate control of public markets and departmental Directions control of public contracts are set by decree of the Council of Ministers. The Departmental Public Contract Monitoring Directions exercise prior procedures procurement control and public service delegations implemented by the Contracting Authority in the relevant department. Without prejudice to the provisions of the Law on the Organization of Commons in the Republic of Benin, the National Directorate of Procurement Monitoring is responsible for monitoring:

- A priori, the public procurement procedure (when amount equals to or is greater than a threshold set by decree of the Cabinet of Ministers and delegations of public service);
- For the procurement procedures below said threshold, a subsequent control is exercised, provided that the regulatory authority of public procurement has not received a denunciation or a complaint relating to irregularities in connection to any award procedure or performance of a public contract or a public service delegation. As such, the National Directorate of public market control:
 - Validates the bidding documents before the launch of the call for tender and its publication;
 - Grants the necessary permits and exemptions at the request of the contracting authorities, when provided for by the regulations;
 - Validates the benchmarking report proposals and award Provisional Market Minutes developed by the procurement commission of the market;
 - Conducts a legal and technical review contract file before its approval and, if necessary, addresses any request for clarification and modification to the Contracting Authority, such as to guarantee the contract compliance with the tender documents and applicable regulations;
 - Validates the draft amendments;
 - Provides technical support to the contracting authorities from the preparation of the bidding documents until the final acceptance of the services;
 - Monitors the activities of the Departmental Directorates Control of Public Procurement.

If yes, is a second approval by the same authority required before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
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.	No
If yes, please specify:	n/a
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.	Yes
Other	No
please specify:	n/a
Among the PPP projects procured within the last two (2) years, how many of them were prioritized along with all other public investment projects? Please elaborate:	Most of the projects.

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>Yes</p>
Relevant legal/regulatory provision (if any)	<p>Section 6(2)(1) of Decree No 2014-349 of June 2, 2014 concerning the guidance note on PPP, provides that PPP Projects should be submitted to a socio-economic study to determine the expected costs and benefits to the public person. The record of the socio-economic study must include a detailed description of the project, key data on its size and its timing including the presentation of:</p> <ul style="list-style-type: none"> - Socio-economic indicators (IRR, NPV) demonstrating the economic and social returns in the long term, - The financial commitments that have an impact on public finances, - Where appropriate, the ability to pay of the users, - The ability to provide a major contribution to local, national and regional development and generating an "inclusive", - The impact on sustainable development (environmental and social), - The degree of risk on the basis of a risk mapping, - Variations and alternatives to the investment project, - A first comparative analysis of financing.
Is there a specific methodology?	<p>No</p>
If yes, elaborate.	<p>n/a</p>
Affordability assessment, including the identification of the required long term public commitments (explicit and implicit)	<p>Yes</p>
Relevant legal/regulatory provision (if any)	<p>Section 6(2) (1) of Decree No 2014-349 of June 2, 2014 concerning the guidance note on PPP provides that PPP Projects should be submitted to a socio-economic study to determine the expected costs and benefits to the public person. The record of the socio-economic study must include a detailed description of the project, key data on its size and its timing, including the presentation of:</p> <ul style="list-style-type: none"> - Socio-economic indicators (IRR, NPV), demonstrating the economic and social returns in the long term, - The financial commitments that have an impact on public finances... <p>Furthermore, Section 6(2) (4) of the guidance note on PPP provides that PPP projects are subject to a fiscal sustainability study to assess the full impact of the transaction on public finances and credit availability.</p>
Is there a specific methodology?	<p>No</p>
If yes, elaborate	<p>n/a</p>
Risk identification, allocation and assessment (risk matrix)	<p>Yes</p>

Relevant legal/regulatory provision (if any)	Section 6(2) (1) of Decree No 2014-349 of June 2, 2014 concerning the guidance note on PPP provides that PPP Projects should be submitted to a socio-economic study to determine the expected costs and benefits to the public person. The record of the socio-economic study must include a detailed description of the project, key data on its size and its timing including the presentation of: ... The degree of risk on the basis of a risk mapping.
Is there a specific methodology?	No
If yes, elaborate	n/a
Financial viability or bankability assessment.	Yes
Relevant legal/regulatory provision (if any)	Sections 6(2)(3) and 6(2)(4) of the Decree No 2014-349 of June 2, 2014 concerning the guidance note on PPP provide that, in parallel with the feasibility study, the projects to be implemented in the partnership agreement, are subject to a fiscal sustainability study to evaluate all the consequences of operation on public finances and credit availability. It is also required that the projects be implemented in concession since the payment of subsidies in favor of partnership is needed. This fiscal sustainability study is completed at the end of the award procedure. The continuation of the process is subject to the opinion of the CAPPP. For partnership contracts and concessions involving public funding, the continuation of the process is also subject to the agreement of the Council of Ministers on the advice of the Minister of Economy and Finance. In this case the application to continue and introduced by CAPPP.
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)	Practice
Is there a specific methodology?	No
If yes, elaborate	n/a
Market assessment (showing evidence of enough interest in the market for the project)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology?	n/a
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:	Some of the projects.

Does the procuring authority include a draft PPP contract in the request for proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate (provide examples):	The private party suggests a draft PPP contract proposal and submits it with the analysis documents.
Have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
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	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate (provide explanation):	<p>There are no provisions in the law regulating PPPs mentioning that the procuring authority needs to make available to the private partner the necessary land or right of way to develop the PPP project. But we will mention that Article 299 of Law No. 2013-01 of August 14, 2013 including the management of Land, provides that Land and Real Estate in the private domain of the State may be:</p> <ul style="list-style-type: none"> - Transferred either for consideration or gratis or rented according to the rules of the common law; - Assigned to a legal entity of public law;

	<p>- Awarded in concession to natural or legal persons of private law.</p> <p>The forms and conditions of sale, lease, assignment or concession are determined by decree of the Council of Ministers.</p> <p>Therefore, we conclude that making the land or right of way available to PPPCo will depend on the agreement between the procuring authority and the private sector entering in a PPP contract.</p>
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Right of way	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate (provide explanation):	<p>There are no provisions in the law regulating PPPs mentioning that the procuring authority needs to make available to the private partner the necessary land or right of way to develop the PPP project. But we will mention that Article 299 of Law No. 2013-01 of August 14, 2013 including the management of Land, provides that Land and Real Estate in the private domain of the State may be:</p> <ul style="list-style-type: none"> - Transferred either for consideration or gratis or rented according to the rules of the common law; - Assigned to a legal entity of public law; - Awarded in concession to natural or legal persons of private law. <p>The forms and conditions of sale, lease, assignment or concession are determined by decree of the Council of Ministers.</p> <p>Therefore, we conclude that making the land or right of way available to the private partner will depend on the agreement between the procuring authority and the private sector entering in a PPP contract.</p>
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:	30
Obtaining the required approvals from other relevant authorities:	30

Preparing the draft PPP contract:	15
Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:	30
PPP Procurement	Score: 63
Are the bid evaluation committee members required to meet specific qualifications?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	<p>Section 5(1) (3) of Decree No 2014-349 of June 2, 2014 concerning the guidance note on PPP provides that: An ad 'hoc commission for call for tenders is created by decree of the Council of Ministers which sets its composition. a) The administrative authority in charge of controlling public order and under the supervision of the Minister for Finance monitors the procurement operations of public-private partnerships.</p> <p>b) The administrative authority in charge of regulating public procurement, attached to the Presidency of the Republic, is the organ of appeal and facilitates the dialogue between the parties in dispute.</p> <p>Note: Pending the adoption of the new code of public order, the two entities responsible of the control and the regulation of the public procurement code will remain relevant in the context of the PPP law. In the exercise of their duties, the two entities must necessarily rely on the expertise of the CAPPP under the conditions specified by decree creating and operating procedures of the CAPPP.</p>
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):	<p>Pursuant to Article 59 of the 2009 Law: When the amount of public procurement equals or exceeds the regulatory threshold referred to in Article 6 of this law on public procurement by tender, it must be the subject of a notice of call for tenders to the public published in the public procurement journal and / or any other national publication and / or international and also in electronic mode, according to a model document which required notices to be set by decree of the Council of Ministers.</p> <p>This also applies to prequalification.</p> <p>Publication of the notice is mandatory under the seal of approval of the National Monitoring Directorate of the competent public procurement, and non-compliance with the publication requirement is sanctioned by the nullity of the proceedings.</p>
If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	http://www.marches-publics.bj/ and http://www.gouv.bj/
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):	<p>According to Article 60 of law No. 2009-02, In open and restricted procedures, the deadline for receipt of applications or tenders cannot be less than thirty (30) calendar days for the markets with amounts exceeding the threshold referred to in Article 6 of this Act, and forty five (45) calendar days for contracts above the Community threshold of publication, from the date of publication of the notice.</p>
and the time in calendar days :	45
Do the tender documents detail the stages of the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 54 of the 2009 Law provides that, the tender documents must include (c) the type of call for tender, and (g) the date, place and time to submit and offer.</p>
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 legal/regulatory provisions (if any):	<p>Section 6(2) (6) of the Guidance note on PPP provides that the prequalification of candidates is based on their ability to perform the contract according to the following criteria: a) references to similar contracts; b) material and human resources for the candidates to be able to perform the contract; c) Financial capacity; d) Publication of a public notice of call for tenders mentioning the list of information to produce; e) Panel Review justifications and qualifications of candidates on the basis of criteria set out in the notice of public call for tenders; f) Ability to confirm the qualifications in accordance with the criteria for pre-qualification .</p>

<p>If yes, do the tender documents specify the prequalification criteria in order to make them available to all of the bidders?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Practice</p>
<p>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</p>	<p>All of the projects.</p>
<p>Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Practice</p>
<p>If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Practice</p>
<p>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:</p>	<p>Most of the projects.</p>
<p>Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>There is an exception when the procedure fails, and no tender offer is presented by the expiration of the deadline for proposal submission, or when the candidates fail to fulfill the tender requirements. In this exceptional case, the procuring authority proceeds for a direct negotiation and dialogue with potential bidders (beyond the simple answering of their questions).</p>

If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 6(5) (II) of the Guidance note on PPPs provides that the contracting authority must ensure equal treatment of all candidates. In particular, the contracting authority must refrain from providing information in a discriminatory manner likely to favor some candidates over others, or reveal to the other candidates solutions proposed or other confidential information communicated by a candidate without agreement of the latter.</p>
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 content and the result of the dialogue disclosed to all of the potential bidders? Please elaborate:	<p>None of the projects.</p>
Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
If no, please elaborate (provide examples):	<p>Nothing in the law states expressly that the procuring authority requires the bidders to prepare and present a financial model with their proposals.</p>
Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 6(2) (IV) of the Guidance notice on PPPs: Partnership contracts are concluded with the candidates that submitted the economically most advantageous offer. The determination of the economically most advantageous offer is made on the basis of the optimum combination of comprehensive cost and other criteria such as running costs, technical performance, architectural quality, protection measures of environment, the delivery or performance, the share of the contract the applicant undertakes to entrust local companies. Finally, and most importantly, the criteria must be listed in the tender documents.</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 in accordance with the criteria stated in the tender documents? Please elaborate:	<p>Most of the projects.</p>

In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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.	n/a
Please specify:	n/a
The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	n/a
The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.	n/a
The regulatory framework does not include any provisions.	n/a
Other	No
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:	75
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 Article 84 of Law N. 2009-02, the award notice is established as a standard document and is the subject of a publication after validation by the competent National management that controls public contracts.

If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	http://www.marches-publics.bj/ - http://www.gouv.bj
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):	According to Article 85 of Law N. 2009-02, the procuring authority must communicate in writing to unsuccessful bidders, the reasons of the rejection of their offer, the amount of the contract awarded, the name of the successful tenderer, and a copy of the award Minutes, within five (05) business days from the receipt of a written request from such bidder.
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):	Practice
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 Article 88 of Law N. 2009-02, except in the proceedings by direct agreement, no negotiation between the procuring authority and tenderers or the successful tenderer on the offer submitted are allowed before the signature of the contract.
Among the PPP procurement processes conducted within the last two (2) years, in how many of them were the terms and conditions changed between the award and the signature of the PPP contract? Please elaborate:	Most of the projects.
Does the procuring authority publish the PPP contract?	No
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	n/a
If yes, is it published online?	n/a

If yes, please specify the website:	n/a
Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a “fast track” procedure?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>According to the Guidance note, the normal procedure is not applied in three cases:</p> <p>1 - Unsolicited offer must include a socio-economic study, detailed technical proposals made on the basis of technical, legal, and financial feasibility studies, financing solutions excluding all forms of public funding, and a detailed operational study. Discounts studies in support of the spontaneous offer remain the exclusive property of the procuring authority. The procuring authority, with the assistance of the Support Unit to public-private partnerships, conduct the expertise against studies submitted by the operator. If the cons-expertise confirms the feasibility of the project, it is requested within a specified time to mobilize the necessary funds before signing the contract. In case of non-respect of the period referred to in the preceding paragraph, the procuring authority reserves the right to conduct a competitive procedure.</p> <p>2- Where a project can only be carried out by a single economic operator because of the absence of competition, determined for technical reasons, for reasons relating to the protection of patents, copyrights or other intellectual property rights, or for reasons relating to the protection of other exclusive rights.</p> <p>3- A procedure is declared unsuccessful when no bids were presented by the expiry of the deadline for submission of tenders, or when the bids were deemed inappropriate. An offer is inappropriate when it is: a) Irregular, meaning not in accordance with the tender documents, b) Inadmissible, meaning received after the deadline, or when the offering price exceeds the procuring authority’s budget, as determined before the launch of the award procedure.</p>
Unsolicited proposals	Score: 58
Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to Section 6(1)(3) of the Guidance note for PPPs, the submission of unsolicited proposals is permitted.
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:	No Data
Does the procuring authority conduct an assessment to	Yes

evaluate unsolicited proposals?	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	According to Section 6(2)(2) of the Guidance note for PPPs, the procuring authority conducts an assessment to evaluate unsolicited proposals.
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):	Practice
If yes, which of the following options best describes how unsolicited proposals are evaluated against existing government priorities? (Please select only one). The regulatory framework details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	No
If yes, please specify:	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	No
The regulatory framework does not include any provisions.	Yes
Other	No
please specify:	n/a
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:	All of the projects.
Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	Section 6(1)(3) of the Guidance note on PPPs provide that the process since the submission of the project throughout the procurement procedure, is conducted in order to make the project impersonal, to respect the confidentiality of certain characteristics of the unsolicited offer, and to allow all bidders to compete on an equal basis.
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):	<p>Pursuant to Section 6(1) (3) of the Guidance note on PPPs, if the public authority decides to proceed with the unsolicited offer, the contract will only be concluded after completion of the socioeconomic study and externalities mentioned in step 1 of 6.2, the feasibility study mentioned in step 3 of point 6.2 , the fiscal sustainability study (if any) mentioned in step 3a , and the implementation of procurement procedures.</p> <p>Furthermore, according to Article 60 of law No. 2009-02, in open and restricted procedures, the deadline for receipt of applications or tenders cannot be less than thirty (30) calendar days for the markets with amounts exceeding the threshold referred to in Article 6 of the this Act and forty five (45) calendar days for contracts above the Community threshold of publication, from the date of publication of the notice.</p> <p>Therefore, the procuring authority grants a minimum period of 45 days to additional prospective bidders (besides the proponent) to prepare their proposals.</p>
and the time in calendar days:	45
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.	Yes
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	Yes
Other	No
please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 6(1)(3) of the Guidance note on PPPs, if the proposal of the private party who submitted the offer is not accepted, the latter is granted a right of first refusal allowing it to match the best offer. This pre-emptive right is subject to the condition that the difference between the two offers should not exceed 5 %. The use of pre-emptive right by the candidate who submitted the original unsolicited offer gives the leading candidate the right for compensation.</p>

PPP Contract Management	Score: 41
Has the procuring or contract management authority established a system to manage the implementation of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any)	Pursuant to Section 6(2) of the Guidance note on PPPs (Stage 7: management of the implementation of PPP contracts): Monitoring the implementation and the performance of the contract is provided by a monitoring team from the public sector. The CAPPP is responsible for supporting the administrative entity of regulation in the ex-post audit of contracts. In order to do this, the procuring authority sends the contracts, signed and notified by the private partner, along with the activity reports produced by the latter, to the CAPPP.
If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Section 6(2) of the Guidance note on PPPs (Stage 7: management of the implementation of PPP contracts): Monitoring the implementation and the performance of the contract is provided by a monitoring team from the public sector. The CAPPP is responsible for supporting the administrative entity of regulation in the ex-post audit of contracts. In order to do this, the procuring authority sends the contracts, signed and notified by the private partner, along with the activity reports produced by the latter, to the CAPPP. Note: According to our best contributor, while awaiting for specific law provisions, the management of the PPP contract is currently done by the CAPPP, the procuring authority and the ARMP.
Participation of the members of the PPP contract management team in the PPP procurement process.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Possibility to consult with PPP procurement experts when managing the PPP contract.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Sections 5(1)(2) and 5(1)(4) of the Guidance note on PPPs provides that the Support Unit for Public-Private Partnerships is an expert body responsible for the implementation structure of the institutional framework and the management of PPP. During the PPP contract management, entities must necessarily rely on the expertise of the CAPPP under the conditions specified by decree creating and operating the CAPPP procedures.
Elaboration of a PPP implementation manual or an equivalent document.	No
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 contact management team? Please elaborate:	Most 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):	<p>According to Section 6(2) (7) of the Guidance note on PPPs, monitoring the performance of the PPP contracts is provided by a monitoring team of the procuring authority. The CAPPP is responsible for supporting the administrative entity of regulation in the ex-post audit of contracts. To do this, public figures of CAPPP send the signed contracts and notifications to the private partner, as well as activity reports produced by the latter. These include activity reports to the partnership agreement: the report includes the following: Economic and accounting data, results of the annual operation account; A presentation of economic methods and the calculations used to determine income and expenses charged to the income account of the operation; A statement of changes made in the framework of the contract, and the amortization table to it; An account of other property and assets necessary for the operation of the facility...; A statement of other renewal expenditure in the year; Commitments to financial implications related to the contract and necessary for the continuity of the public service; Annual ratios of economic profitability and internal profitability of the project, and the distribution between the cost of equity and cost of debt related to financing activities and assets items of the contract.</p> <p>Monitoring of indicators corresponding to: The performance targets specified in the contract; The share of the contract entrusted to SMEs and national artisans; Where appropriate, monitoring schedules revenue collected by the contractor; Penalties applied to the contract holder and those paid by him.</p>
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):	<p>According to Section 6(2) (7) of the Guidance note on PPPs, monitoring the performance of the PPP contracts is provided by a monitoring team of the procuring authority. The CAPPP is responsible for supporting the administrative entity of regulation in the ex-post audit of contracts. To do this, public figures of CAPPP send the signed contracts and notifications to the private partner, as well as activity reports produced by the latter. These include activity reports to the partnership agreement: the report includes the following: Economic and accounting data, results of the annual operation account; A</p>

	<p>presentation of economic methods and the calculations used to determine income and expenses charged to the income account of the operation; A statement of changes made in the framework of the contract, and the amortization table to it; An account of other property and assets necessary for the operation of the facility...; A statement of other renewal expenditure in the year; Commitments to financial implications related to the contract and necessary for the continuity of the public service; Annual ratios of economic profitability and internal profitability of the project, and the distribution between the cost of equity and cost of debt related to financing activities and assets items of the contract...</p>
<p>The procuring or contract management authority must periodically gather information on the performance of the PPP contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Section 6(2) (7) of the Guidance note on PPPs, monitoring the performance of the PPP contracts include the monitoring of indicators corresponding to the performance targets specified in the contract...</p>
<p>The procuring or contract management authority must establish a risk mitigation mechanism.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The PPP contract performance information must be available to the public.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>Other</p>	<p>Yes</p>
<p>please specify:</p>	<p>In practice, random visits and spontaneous control procedures can happen.</p>
<p>Is PPP contract performance information publicly available online?</p>	<p>No</p>
<p>If yes, please specify the website:</p>	<p>n/a</p>
<p>Does the regulatory framework expressly regulate a change in the structure (i.e. stakeholder composition) of PPPCo?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>If yes, which of the following circumstances are specifically regulated? (check all that</p>	<p>n/a</p>

apply): Any change in PPPCo during an initial period (e.g. construction and first five years of operation).	
If yes, please provide the relevant legal/regulatory provisions:	n/a
In case of a change affecting the controlling interest, the replacing entity must meet the same technical qualifications as the original operator.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Flexibility to substitute non-controlling interest after the initial period.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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 legal/ regulatory provisions:	According to Section 6 (7) of the Guidance note PPP contracts should include, among others, provisions related to conditions of contract amendment to reflect the inclusion of changes needed, legislative or regulatory changes, as well as technical innovations.
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.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
A change in the investment plan or duration of the contract.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Does the regulatory framework expressly regulate	Yes

the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure.	
If yes, please provide the relevant legal/regulatory provisions:	Section 7 of the Guidance note on PPPs provides that the PPP contract needs to include, among others, a provision relating to Force Majeure.
Material Adverse government action.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 7 of the Guidance note on PPPs provides that a provision on material adverse change, as well as their consequences on the execution of the contract (including its financial impact), should be included in the PPP contract.
Change in the Law.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Refinancing.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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	<p>According to Article 15 of Law No. 2009-02, there shall be a public market regulatory authority. It is the regulator of public procurement and is attached to the Presidency of the Republic. Additionally, according to Section 5(1)(4) of the Guidance note on PPPs, the administrative authority in charge of controlling public order, and under the supervision of the Minister in charge of Finance, monitors the procurement operations of public-private partnerships. b) The administrative authority in charge of regulating public procurement, attached to the Presidency of the Republic, is the organ of appeal that facilitates the dialogue between the parties in disputes.</p> <p>Pending the adoption of the new code of public order, the two entities responsible of control and regulation, provided for in the public procurement code, will remain relevant in the context of the PPP law. In the exercise of their duties, the two entities must necessarily rely on the expertise of the CAPPP under the conditions specified by decree creating and operating procedures of the CAPPP.</p>
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	No

disputes arising during the implementation of the PPP.	
If yes, please specify:	n/a
The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.	No
The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.	No
Other	Yes
please specify:	<p>The mechanisms for dispute resolution are not very clear. In fact, according to Article 15 of Law No. 2009-02, there shall be a public market regulatory authority. It is the regulator of public procurement and is attached to the Presidency of the Republic. Additionally, according to Section 5(1)(4) of the Guidance note on PPPs, the administrative authority in charge of controlling public order, and under the supervision of the Minister in charge of Finance, monitors the procurement operations of public-private partnerships. b) The administrative authority in charge of regulating public procurement, attached to the Presidency of the Republic, is the organ of appeal that facilitates the dialogue between the parties in disputes.</p> <p>Pending the adoption of the new code of public order, the two entities of control and regulation of the public procurement code will remain relevant in the context of the PPP law. In the exercise of their duties, the two entities must necessarily rely on the expertise of the CAPPP under the conditions specified by decree creating and operating procedures of the CAPPP.</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?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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.	n/a
If yes, please specify:	n/a
The regulatory framework prescribes that the lender	n/a

step-in rights should be regulated in the contract.	
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	n/a
Other	n/a
please specify:	n/a
Does the regulatory framework expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify:	Reference to the provisions applicable to public procurement, besides the terminating effect of the force majeure, PPPs would be subject to termination under the conditions stipulated for in the general administrative clauses in the following cases: After favorable opinion of the National Directorate of Procurement Monitoring, at the initiative the procuring authority, in case the contractor committed a fault; Either at the initiative of the Contractor for default, after a formal notice remained without effect for three (03) months, or by following a postponement in accordance with Article 134 of the code of public contracts; Either as a result of an agreement between the contracting parties or in the case provided for in Article 124, fourth indent of the procurement code .
and provide the relevant legal/regulatory provisions:	Section 7 of the Guidance note on PPPs provides that the PPP contract should include, among others, provisions regarding the grounds for termination of the contract by the procuring authority, for default of the private party, or for a reason of general interest, or pursuant to a force majeure circumstance, as well as the conditions of insurmountable (if any), covering the value of the work performed under the contract, as well as the losses or expenses incurred by any of the parties to the PPP contract.
If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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.) related to PPPs that: 50.2. Are ongoing and/or are planned to	Yes

be adopted AFTER June 1, 2016?	
Please describe:	A specific Law on PPPs as well as an amendment of the concession and delegation law are expected.