



BENCHMARKING PPP PROCUREMENT 2017 IN BRAZIL – CONCESSIONS

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 main laws regulating PPPs in Brazil at the Federal Level are: (i) the General Law of Public Procurement and Government Contracts (Federal Law nº 8,666 of 1993) - hereinafter, the "Law 8,666/1993" or "Public Procurement Law", (ii) the General Law of Permissions and Concessions of Public Services (Federal Law nº 8,987 of 1995) - hereinafter the "Concessions Law", (iii) the Law of Granting and Extension of Concession of Public Services (Federal Law nº 9,074 of 1995), (iv) the General Law for Public-Private Partnerships (Federal Law nº 11,079 of 2004) -hereinafter, the "PPP Law", (v) the Law of the Differential Public Procurement Regime (Federal Law nº 12,462 of 2011), (vi) the Regulatory Decree for the Steering Committee for the Federal Public-Private Partnership (Federal Decree nº 5.385 of 2005), (vii) the Federal Government's Decree on Expressions for interest and Unsolicited Proposals (Federal Decree nº 8,428 of 2015), (viii) the Law of the National Privatization Program (Federal Law nº 9,491 of 1997). In Brazil, agreements entered into by the Public Administration entities are generally regulated by Law No. 8,666/1993 (Public Procurement Law), which sets forth the general rules applicable to public procurement proceedings and to agreements for the purchase of assets and services by the Public Administration. The permissions and concessions for the rendering of public services by private parties are regulated by Law No. 8,987/1995 (Concessions Law), and, supplementary, by Law No. 8,666/1993 (Public Procurement Law). Common concessions are regulated by the Law No. 8,987/1995. Law No. 8,666/1993 (Public Procurement Law) will apply to PPPs when the Law No. 8,987/1995 (Concession Law) regulate the subject matter in question.</p> <p>In Brazil besides the PPP regulatory framework at the federal level, some State and local governments have their own PPP laws. For example, the State of São Paulo PPPs is regulated by Law No. 11,688 adopted on May 19, 2004. The current analysis will focus on the federal regulatory framework, and in particular on common concessions (a parallel analysis will refer to PPPs <i>stricto sensu</i> - sponsored and administrative concessions).</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	Federal laws and decrees: (i) http://www.planalto.gov.br/ccivil_03/Leis/L8666cons.htm (ii) http://www.planalto.gov.br/ccivil_03/Leis/L8987cons.htm (iii) http://www.planalto.gov.br/ccivil_03/LEIS/L9074cons.htm (iv) http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/lei/l11079.htm (v) http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/Lei/L12462compilado.htm (vi) http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/Decreto/D5385.htm (vii) http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Decreto/D8428.htm (viii) http://www.planalto.gov.br/ccivil_03/LEIS/L9491.htm
Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the	No

following sectors?	
Transportation.	
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	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 2, paragraph 4 of the PPP Law forbids the formation of PPP Agreements (i) valued under R\$20 million, (ii) in which the period of service is under 5 years, and (iii) in which the only object is either (a) the supply of labor, (b) the supply and installation of equipment, or (c) the execution of public works. Oil and Gas sector is regulated by Law No. 12,351 adopted on December 22, 2010 (http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Lei/L12351.htm), however this sector is not included in the scope of the survey according to the PPP definition provided and used by the World Bank PPP Group.
Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):	The regulatory framework of PPP in Brazil established a regime in which any entity of the Government is able to procure and contract a PPP. As established in Article 2, paragraph 1 of the Federal Law nº 8,987 of 1995 (Concession Law), the procuring authority is "the Union, the State, The Federal District or the Municipality, within which the competence the public service is subject of concession or permission."
In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	No
If yes, please indicate its name, and its website (if available):	n/a

If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.	n/a
PPP policy guidance and capacity building for other public authorities.	n/a
PPP promotion among the public and/or private sectors in national and international forums.	n/a
Technical support in implementing PPP projects.	n/a
Gatekeeping (approval of PPP projects).	n/a
Procurement of PPPs.	n/a
Oversight of PPP implementation.	n/a
Other	n/a
please specify:	n/a
Preparation of PPPs	Score: 27
Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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?	No
If yes, please specify the relevant authority and provide the relevant legal/regulatory provisions (if any):	n/a

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):	Concerning the prioritization of public investment, it is relevant to notice that the Union has some public policies with the purpose of prioritizing and developing Brazilian infrastructure. One of this policies is the Growth Acceleration Program (PAC, acronym in Portuguese) - http://www.pac.gov.br/ . The PAC was established in 2007 in order to promote the planning and execution of the relevant social infrastructure, urban infrastructure, logistics and energy of Brazil. Also, it contributes to the accelerated and sustainable development of the Brazilian infrastructure. Likewise, the Investment in Logistics Program (PIL) - http://www.logisticabrasil.gov.br/ - is the program launched by the Federal Government to enhance the Brazilian logistics infrastructure. Hence, it promotes the investment of foreign and Brazilian investors in such infrastructure, and, by doing so, it prioritizes PPP and concession logistics projects in Brazil.
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.	Yes
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 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)	Yes
Relevant legal/regulatory provision (if any)	Practice
Is there a specific methodology?	No
If yes, elaborate.	n/a
Affordability assessment, including the identification of the required long term public commitments (explicit and implicit)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology?	n/a
If yes, elaborate	n/a
Risk identification, allocation and assessment (risk matrix)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology?	n/a
If yes, elaborate	n/a
Financial viability or bankability assessment.	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 7 of Law 8,666 and Article 18, item XV of Law 8,987/1995, the procurement process must be preceded by the basic project to be prepared by a company hired by the Procuring Authority for such purpose. The basic project usually includes all the technical and financial studies, impact studies, among other documents and studies, as required and specific for each concession project, and defined by the procuring authority.
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	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology?	n/a
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:	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):	According Article 18, paragraph 14 of the Concessions Law, the procuring authority has the obligation to include a draft of the contract in the request for proposals.
If no, please elaborate (provide examples):	n/a
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>The Public Administration can either make available to the private partner the necessary land or right of way, to develop the PPP project, or it can also be part of the development of the study to find the right area or land for the project.</p> <p>Regarding the performance of the acts necessary to make available the land, only the public administration has the power to declare the public utility of the land (in case of eminent domain) or to establish the right of way in a certain area. Nevertheless, the government can allocate to the concessionaire the obligation to negotiate with landowners, conduct the expropriation procedures and indemnify the owners, as part of the PPP obligations. Such possibility is regulated by Articles 28.VIII and 29.VIII of the Concessions Law.</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>The Public Administration can either make available to the private partner the necessary land or right of way to develop the PPP project, or it can also be part of the development of the study to find the right area or land for the project.</p> <p>Regarding the performance of the acts necessary to make available the land, only the public administration has the power to declare the public utility of the land (in case of eminent domain) or the to establish the right of way in a certain area. Nevertheless, the government can allocate to the concessionaire the obligation to negotiate with landowners, conduct the expropriation procedures and indemnify the owners, as part of the PPP obligations. Such possibility is regulated by Articles 28.VIII and 29.VIII of the Concessions Law.</p>
Does the regulatory framework establish any exceptions where the	No

preparation process described above does not apply or allows for a “fast track” procedure?	
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:	180
Obtaining the required approvals from other relevant authorities:	160
Preparing the draft PPP contract:	105
Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:	152
PPP Procurement	Score: 85
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)	The bid evaluation committee is attributed with the task of receiving, examining and evaluating the bid proposals. It shall be composed by the members of the regulatory agencies, or by the ministry responsible for the Concession procurement. In this regard, Article 51 of the Law 8,666/1993 (Public Procurement Law that applies subsidiary to both PPPs and Concessions), establishes that the committee shall be composed of a minimum of 3 members and, at least 2 of them shall be qualified public servants.
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	Yes

qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.	
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):	Pursuant to Article 21 of the Law No. 8,666/1993, any public bid must be published in the Official Gazette of the Federal Executive (in case of federal PPPs and Concessions) and in widely circulated newspapers.
If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	http://portal.in.gov.br/
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):	Article 21 of Law 8.666/1993 provides for: 45 days, when the qualification uses technical criteria, and for 30 days when the criteria is exclusively price.
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):	Pursuant to Article 40 of the Law No. 8,666/1993 the request for proposals must provide all the details of the tender.
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):	Article 114 of the Law No. 8,666/1993 allows for a pre-qualification stage.
If yes, do the tender documents specify the prequalification criteria in	Yes

order to make them available to all of the bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 114 of the Law No. 8,666/1993 "the pre-qualification shall be subject to the requirements of this Act relating to competition, the convening of stakeholders, the procedure and the analysis of the documentation".
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):	Article 39 of the Law nº 8.666/1993 establishes that for large projects the bidding process will necessarily begin with a public hearing providing bidders with access to all relevant information and to all manifested all concerns. Article 40.VIII of the Law nº 8.666/1993 establishes that the procurement notice must include the locations, times and access codes to the data, information and clarifications to the tender conditions.
If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 40.VIII of the Law nº 8.666/1993 establishes that the procurement notice must include the locations, times and access codes to the data, information and clarifications to the tender conditions.
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:	All of the projects.
Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
If yes, does the procuring authority disclose the content	n/a

and the results of the dialogue to all of the potential bidders?	
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 content and the result of the dialogue disclosed to all of the potential bidders? Please elaborate:	n/a
Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice.
If no, please elaborate (provide examples):	n/a
Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 45 of the Law 8,666/1993, the examination of the proposals will be done on the basis of the requirements, parameters and outcome indicators relevant to the object, clearly and objectively defined in the public procurement notice.
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:	All of the projects.
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	n/a

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.	
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	n/a
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:	180
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):	Article 22 of the Federal Law No. 8,987/1995 grants a full access to every bidder to the decisions of the PPP procurement process. The result of the procurement process is supposed to be published by the same means of publication with which the bidding documents were made public. Article 43, item VI and Article 109 of the Federal Law No. 8,666/1993 also indicates that the award notice is to be published in the official journal of the Administrative entity.
If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	http://portal.in.gov.br/
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):	Article 22 of the Federal Law nº 8,987 of 1995 grants full access to every bidder to the decisions of the PPP procurement, which includes their access to the final decision of the evaluation committee. They are entitled to know the decisions and the result of the PPP procurement process, as well as to challenge them. Also, pursuant to Article 63 of the Law No. 8,666/1993, all procurement documents shall be made available to the public, upon request.
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):	The regulatory framework does not provide any minimum information standards, but it requires that any third party or stakeholder be able to have access to the procurement documents. The result of the Concession procurement process shall be recorded in the minutes of meeting of the evaluation committee (comissão julgadora), pursuant to Article 43 of Law No. 8,666/1993. In general, every single act of the procuring authority must be duly justified, in accordance to Federal Law No. 9.784/1999 (Federal Administrative Procedures). The decision regarding the result of the Concession procurement process is no exception to that principles, and the right to access such decision implies the access to its grounds for the selection of the winning bid.
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:	The evaluation committee should negotiate the price with the selected bidder with reference to the lowest price presented among the classified bidders. However, in hypothesis of unsuccessful negotiation, the same procedure shall be applied, in succession, with other ranked bidders in compliance with the Article 46, II, of the Law No. 8,666/1993. Moreover, in general the Brazilian regulatory framework do not contemplate any sort of negotiation between the selected bidder and the procuring authority between the award and the signature of the contract. The general principle adopted in Brazilian law is that the bidding documents are not to be changed during the bidding process, and that provision includes the contract and its economic terms, since they are part of the bidding documents. That principle is outlined in Articles 3 and 41 of the Federal Law nº 8,666/1993. Any substantial modification on the bidding documents - including the contract - supposes the reedition of the bidding procedure, as established in Article 21, paragraph 4, of the Federal Law No. 8,666/1993.
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:	Some of the projects.

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):	Article 61, sole paragraph, of the Federal Law No. 8,666/1993 provides that every contract must be published through the official means in order to establish a condition to ensure its efficiency. Publishing an extract of the signed contract is a pre-condition for it to produce effects. Also, according to Article 63 of the Law No. 8,666/1993, all administrative contracts derived from public bidding must be kept available. Furthermore, Article 8, § 1 and §2 of the Public Transparency Law (Law No. 12,527/2011) provides that administrative contracts must be made public by their respective competent authorities.
If yes, is it published online?	Yes
If yes, please specify the website:	http://portal.in.gov.br/
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:	Articles 24 and 25 of Law No. 8.666/1993 establish several exceptions to the open tender procedure. Also, Article 13 of the PPP Law provides that there may be an inversion of the pre-qualification and bidding phases. Therefore, only the winning bidder shall have its pre-qualification requirements valued. Finally, the Brazilian regulatory framework contemplates a sort of fast track procedure, called Differential Public Procurement (Regime Diferenciado de Contratações - RDC). It was created by Federal Law nº 12,462 of 2011, more specifically in its Article 12. It originally aimed to improve the efficiency of the procurement process related to infrastructure for the World Cup and the Olympic Games. Further, it was extended for other areas, such as airports, health and sanitation. RDC law contains certain measures that are supposed to reduce time of the procurement process, such as the reduction of procedure deadlines, or the possibility of contracting the preliminary and final engineering project together with the civil work itself (normally, project and execution are to be contracted through two different bidding processes).
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 legal/regulatory provisions:	Unsolicited proposals for Concessions are regulated by the Federal Decree No. 8.428/2015. Unsolicited proposals may be submitted to the public authorities by private persons or legal entities, in a process call "Procedimento de Manifestação de Interesse" (Private Interest Manifestation).
If yes, please specify, to the best of your knowledge, the percentage of PPP investments in your country approved as unsolicited	No data

proposals during the last five (5) years:	
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):	Articles 9, 10, 11 and 12 of Decree No. 8,428/2015 regulate the assessment of 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):	According to Article 3 of the Decree No. 8,428/2015, unsolicited proposals must contain an explanation of how the proposed project meets public needs. Afterwards, the public authority shall publish a public notice inviting third parties to offer contributions to the project, defining its scope and criteria to evaluate how the project should meet public interest. The proposal must be consistent with the public interest (Article 4, II, a of Decree No. 8,428/15). The Decree No. 8,428/15 is applicable to the PPPs defined as priorities by the Steering Committee but not only to them (Article 19 of Decree No. 8,428/15).
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.	Yes
The regulatory framework does not include any provisions.	No
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	Most of the projects.

existing government priorities? Please elaborate:	
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):	The Brazilian regulatory framework establishes that once an unsolicited proposal is filed, the procuring authority has the obligation to issue a public call for proposals, in order to verify if there are other private parties interested in providing the studies for a PPP or common concession (Articles 1 and 3 of the Federal Decree No. 8,428/2015). The procuring authority issues the authorization to present projects, surveys, investigation and studies, and, once such studies are presented, the procurement authority processes their evaluation, according with the assessments above, provided for in Article 1, paragraph 4 of the Federal Decree nº 8,428 of 2015. Once the studies are concluded, after the evaluation of the unsolicited proposals, the procuring authority is free to decide whether to initiate a competitive procurement procedure or not. Finally, any selected unsolicited proposal is followed by a public call for proposals, since, pursuant to Article 17 of Federal Decree 8.428/2015, the unsolicited proposal leads to a regular bidding process, with the exception that the unsolicited proposal's cost should be compensated during the public tender.
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):	Article 21 of Law 8.666/1993.
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).	Yes
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):	Brazilian legislation provides that the original proponent will be reimbursed for the projects development cost by the winner of the public procurement (as a condition to sign the PPP contract). The possibility of reimbursement of the developer's fee is settled in Article 21 of the Federal Law No. 8,987/1995. Article 17 of the Federal Decree No. 8,428/2015 provides that, if the unsolicited proposal studies are used for the bid, the bidding documents must explicitly contain the obligation of reimbursement for the project development cost by the winner of the procurement process.
PPP Contract Management	Score: 77
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)	Article 3 of the Law nº 8.987/1995 establishes that the competent ministry or regulatory agency must supervise concession contracts. Also, Article 67 of the Law nº 8.666/1993 establishes more broadly that the implementation of any contract must be accompanied and supervised by a specially designated representative of the procuring authority.
If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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	No Data

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:	
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):	Article 58, line III of the Law nº 8.666/1993 establishes that the procuring authority has the responsibility to oversight the implementation of the contract. Article 67 of the same Law nº 8.666/1993 establishes that: The performance of the contract must be accompanied and supervised by a representative of the Administration that is specially designated, permitted to engage third parties to assist, and provided with the information pertinent to this assignment. Articles 3 and 23, line VII of the Law nº 8.987/1995 establish among the rights and obligation of the parties that of oversight of the Concession execution.
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):	According to Article 31.III of the Federal Law No. 8,987/1995 the private partner must provide the procuring authority with information regarding the delivery of the service, while Article 23.XIV of the same Law mandates the contract to regulate the information to be provided.
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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 legal/regulatory provisions:	Any change in the structure of the private partner is to be communicated to the Granting Authority, and any change that implies change in controlling interest is subject to prior authorization of the Granting Authority. The change in controlling interest supposes that the replacing entity meets the same juridical, economic and technical qualifications requested in the procurement process. The matter is regulated in Article 27 of the Concessions Law and in Article 9, paragraph 1, of the PPP Law. Each PPP contract may contain specific rules besides the one referred to above, such as the prohibition to change control in the private partner during an initial period, or the exigence that one specific entity (for instance, the operator) remains in the controlling group for a certain time.
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).	No
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.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 27 of the Concessions Law, and more broadly Article 55 of the Law No. 8,666/1993 provides that the private partner shall observe all qualifications required for the procurement phase throughout the life of the contract.
Flexibility to substitute non-controlling interest after the initial period.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 27 of the Concessions Law and Article 9 of the PPP Law allow for the transfer of the PPP contract after the authorization of the procurement authority.

Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is singed)?	Yes
If yes, please provide the relevant legal/ regulatory provisions:	Article 57, paragraph 1 of the Law No. 8,666/1993 provides that a change in the project execution, conclusion and delivery dates may be extended upon certain conditions (change in the project scope, unexpected event, interruption of the project works, increase in the quantities originally agreed upon, omission or delay from the public partner). Also, Article 65 of the same law provides the conditions on which contracts may be amended.
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.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Also, Article 65 of the same law provides the conditions of a change in scope: The contractor has to accept, under the same contractual conditions, additions or deletions that may be in the works, services or purchases, up to 25% (twenty five percent) of the updated initial value of the contract, and up to 50% (fifty percent) in case of addition of private retirement building or equipment. Furthermore, Article 65 § 2 provides that: No addition or deletion may exceed the limits set out in the preceding paragraph.
A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 65 of Law No. 8,666/1993 provides that there may be an economic financial readjustment in order to rebalance the risk between the private partner and the public partner.
A change in the investment plan or duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 57, paragraph 1 of Law No. 8,666/1993 provides that the project execution, conclusion and delivery dates may be extended upon certain conditions (change in the project scope, unexpected event, interruption of the project works, increase in the quantities originally agreed upon, omission or delay from the public partner).
Does the regulatory framework expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 65, line II, Item d (that regulates the right to reestablishing the economic balance of the contract in case of Force Majeure) and Article 78, line VII, of the Law nº 8.666/1993; Article 38, paragraph 1, line III of the Law nº 8.987/1995 regulates the possibility of termination due to Force Majeure.
Material Adverse government action.	Yes

If yes, please provide the relevant legal/regulatory provisions:	Article 65, line II, item d of the Law nº 8.666/1993 (that regulates the right to reestablishing the economic balance of the contract in case of Act of the Price, equivalent to Material Government Action)
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 9, paragraph 3, of the Federal Law nº 8,987 of 1995 provides that any change in taxes or legal obligations that have economic impact on the concession shall engage revision on the tariffs charged by the concessionaire, in order to maintain the economic balance of the contract.
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	The PPP contracts can contain a clause of a private dispute resolution mechanism, such as arbitration, as established in Article 23-A of the Concessions Law. Arbitration is not mandatory and it is a choice of the procuring authority when it designs the contract. If arbitration is adopted, it must follow the requirements settled in those Articles, namely to adopt Portuguese as language, and to be held in Brazil.
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.	No
If yes, please specify:	n/a
The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.	Yes
The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.	No
Other	No
please specify:	n/a
Does the regulatory framework allow for the	Yes

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?	
If yes, please provide the relevant legal/regulatory provisions:	Article 27-A of the Concessions Law authorizes the procuring authority to include step-in right in PPP contracts. Article 27-A contains further regulation on the subject, namely describing the obligations that the lender must fulfill and the requirements he will have to meet, but each concession contract shall further regulate the matter.
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.	Yes
If yes, please specify:	Article 27-A of the Concessions Law authorizes the procuring authority to include step-in right in PPP contracts. Article 27-A contains further regulation on the subject, namely describing the obligations that the lender must fulfill and the requirements he will have to meet, but each concession contract shall further regulate the matter.
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
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 Concession Law expressly establish the grounds for termination of a PPP contract, namely: (i) the mere end of the contractual period, (ii) redemption (early termination due to the public interest in reassuming the provision of the services), (iii) forfeiture (concessionaire's breach of contract), (iv) rescission (judicial termination due to the Administration's breach of contract), (v) annulment and (vi) bankruptcy or extinction of the concessionaire.
and provide the relevant legal/regulatory provisions:	Article 35 of the Concessions Law.
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:	Article 35, 1st and 2nd paragraphs, of the Concessions Law establishes that the termination of the PPP contract has the following consequences: (i) transfer of the public service to the Government, as well as (ii) the return of all the reversible assets to the Government and (iii) application of the regime of compensations for the termination of the contract.
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?	Yes
Please describe:	Decree no. 8,428/2015 established the procedure for the private sector to present its interest in public projects, after a public calling. In 2015, the "PPP Mais", a new legislation aiming to enable new investments in infrastructure sectors in Brazil, was prepared (although not published yet). It is based on five key findings of the Ministry of Finance's perception on public-private partnerships in Brazil: I - capacity of the public administration to model appropriate projects is inadequate because of the procurement laws applicable to the preliminary conception stage (especially Federal Law No. 8,666 of 1993); II - current bidding rules fail to properly foster competition; III - Lack of coordination for the granting of licenses and other permissions severely affect the efficiency of the execution of projects; IV- contracts fail to provide investors with legal certainty; V - Brazil lacks mechanisms to encourage private infrastructure projects.
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 be adopted AFTER June 1, 2016?	Yes
Please describe:	The only reform ongoing is the Bill nº 3,836 of 2015. It changes both the Federal Law nº 8,987 of 1995 and Federal Law nº 11,079 of 2004. It adds two paragraphs in Article 14 of both Laws. The first paragraph makes mandatory that the implementation of the PPP uses at least twenty percent (20%) of Power proceeding from renewable sources. The second paragraph defines which renewable sources are considered within the scope of the Federal Law nº 8,987 of 1995 and Federal Law nº 11,079 of 2004. According to the law, the following resources are considered renewable: wind, solar, tidal, hydraulic small exploitations, biomass, biofuels, and ocean waves.