

BENCHMARKING PPP PROCUREMENT 2017 IN CANADA

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>There are no regulatory barriers to doing PPPs in Canada at the federal, provincial, or municipal level. The Canadian PPP regulatory framework on the federal level would include:</p> <p>Government Contracts Regulations SOR/87-402 (1987) (last amended September 22, 2011)</p> <p>Department of Public Works and Government Services Act S.C. 1996, c. 16 (last amended on June 26, 2013)</p> <p>Financial Administration Act R.S.C., 1985, c. F-11 (1985) (last amended on October 1, 2014)</p> <p>Procurement Services Act [SBC 2003] Chapter 22 (Assented to April 10, 2003)</p> <p>Guideline to Implementing Budget 2011 Direction on Public-Private Partnerships, issued by the Treasury Board in 2012 [hereinafter "Federal Implementing Guidelines"]. According to Section 6.1 of these Guidelines,</p> <p>"In the Government of Canada, P3s are governed by various Treasury Board policies and their associated standards and directives. Policies governing federal investments in assets and acquired services primarily reside under the Policy Framework for the Management of Assets and Acquired Services. Ensuring value for money in the management of assets and acquired services is a guiding principle of the framework and its associated policy instruments.</p> <p>Deputy heads are accountable for ensuring that proper due diligence is conducted and that investment decisions demonstrate value for money in line with the principles outlined in Treasury Board policies.</p> <p>The following is a summary of relevant Treasury Board policy considerations for P3s:</p> <p>Under the Policy Framework for the Management of Assets and Acquired Services, value for money and sound stewardship are achieved through a life-cycle approach to the management of assets and acquired services.</p> <p>For decisions involving federal real property, departments and agencies may consult the Policy on Management of Real Property. The Guide to the Management of Real Property provides guidance to departments and agencies on real property decisions throughout the property's life cycle.</p> <p>Federal investments should be considered in the context of the department's investment planning process. The objective of the Policy on Investment Planning is to contribute to the achievement of value for money and sound stewardship in government program delivery through effective investment planning.</p> <p>Federal real property projects are subject to the requirements of the Policy on the Management of Projects. The objective of the policy is to ensure that the appropriate systems, processes, and controls for managing projects are in place at a departmental, horizontal, or government-wide level and that they support the achievement of project and program outcomes, while limiting the risk to stakeholders</p>

	<p>and taxpayers. Departments and agencies may consult the Contracting Policy and associated policy instruments for contracting and procurement considerations."</p> <p>Treasury Board of Canada Secretariat Contracting Policy (1989) [hereinafter "Federal Contracting Policy"]. This includes the Policies' Appendix C - Treasury Board Contracts Directive; Section 3 of the Federal Contracting Policy addresses its scope of application and provides, "This policy applies to all departments and agencies, including departmental corporations and branches designated as departments for purposes of the Financial Administration Act, except those included within the meaning of paragraph (c) of the definition of "department" found in section 2 of that Act." Competition Act, RSC 1985, c C-34 (1985)</p> <p>Additionally, contributors highlighted the nature of the countries legal system, which embodies case law and inter-provincial trade agreements that the regulatory framework would be comprised of. This shall form the regulatory framework on PPPs in Canada's federal level system for purposes of this analysis.</p>
<p>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</p>	<p>http://lois.justice.gc.ca/eng/</p>
<p>Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors? Transportation.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>Water and irrigation</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>Energy generation and distribution</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>Telecom</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>Health</p>	<p>No</p>

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>There are multiple procuring authorities in Canada. On the Federal level, Crown Agencies and Corporations act as procuring authorities. Article 2 of the Government Contracting Regulations defines “contracting authority” as:</p> <p>(a) the appropriate Minister, as defined in paragraph(a), (a.1) or (b) of the definition appropriate Minister in section 2 of the Financial Administration Act;</p> <p>(b) a department within the meaning of paragraph (a.1) of the definition of “department” in section 2 of the Financial Administration Act that has the legal authority to enter into a contract;</p> <p>(c) a departmental corporation named in Schedule II to the Financial Administration Act;</p> <p>(d) any individual — other than a commissioner appointed under the Inquiries Act and any individual authorized under the Parliament of Canada Act to enter into a contract — who is authorized by or under an Act of Parliament to enter into a contract. (autorité contractante).</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):	PPP Canada.
If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.	No
PPP policy guidance and capacity building for other public authorities.	Yes
PPP promotion among the public and/or private sectors in national and international forums.	Yes
Technical support in implementing PPP projects.	No
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: 92
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):	If the project is receiving federal funds, then it is subject to the approval of the appropriate government ministry (e.g., Transport Canada). Article 4.1.6 of the Treasury Policies provides that: "Treasury Board approval must be obtained prior to entering into contracts or contractual arrangements where the values or the contract costs (which include all applicable taxes including GST and HST) exceed the limits prescribed by the Treasury Board in the Treasury Board Contracts Directive (Appendix C)."
If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The Federal Treasury Board (Conseil du Trésor) approval is required before contract execution. This approval requirement is not exclusive for PPPs but also required for similar scope procurement under any model.
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	Contributors identified that the (Conseil des ministres), or the Cabinet, would approve certain PPP projects that are large scope projects, which are considered new policy initiatives within the Federal Government.
and provide the relevant legal/regulatory provisions (if any):	Section 127(2) of the Financial Administration Act addresses public borrowing and stipulates, "Where a parent Crown corporation indicates in a corporate plan or an amendment to a corporate plan an intention to borrow money, the Minister of Finance may require that his recommendation, in addition to that of the appropriate Minister, be obtained before the plan or amendment is submitted to the Governor in Council for approval."
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):	On the federal level, Section (2) of the Canadian Strategic Infrastructure Fund Act (S.C. 2002, c. 9, s. 47) provides, "The Fund shall, where appropriate, promote the use of partnerships between public and private sector bodies." And according to Section 5 of the Federal Implementing Guidelines, "[B]udget 2011 encourages federal organizations to explore potential P3 opportunities through a P3 screen for infrastructure projects that have capital costs of less than \$100 million and a lifespan of less than 20 years. Budget 2011 also encourages federal organizations to explore P3 opportunities for investments other than federal infrastructure projects." On the provincial level, some contributors have provided that there is no explicit regulatory provision, however this prioritization is done through results-based plans submitted by Ministries to the Treasury Board Secretariat.
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	Most of the projects.

(2) years, how many of them were prioritized along with all other public investment projects? Please elaborate:	
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)	Contributors have identified that the Business Case Guide issued by the Board of Treasury on the Federal level provides the methodology for socio-economic analysis of PPP projects. Section 3.4.3 of this Guide discusses "impact assessments".
Is there a specific methodology?	Yes
If yes, elaborate.	<p>Contributors have identified that the Business Case Guide issued by the Board of Treasury on the Federal level provides the methodology for socio-economic analysis of PPP projects. Section 3.4.3 discusses "impact assessments" and lists a number of factors that should be provided and assessed in order to proceed with investments. These include:</p> <p>Economic:</p> <ul style="list-style-type: none"> - Fluctuating interest and exchange rates - Current economic situation and trends - Current and projected economic growth - Unemployment and labor supply - Labor costs - Levels of disposable income and income distribution <p>Social:</p> <p>Resources, training, change management, and cultural impact</p> <ul style="list-style-type: none"> - Population growth rate and age profile - Population health, education, social mobility, and attitudes toward these - Population employment patterns, job market freedom, and attitudes toward work - Employee engagement <p>In addition, according to New Building Canada Fund: Procurement Options Analysis Guide [hereinafter "Procurement Analysis Guide"] http://www.p3canada.ca/~media/english/resources-library/files/nbcf%20poa%20guide_20140328_final_eng_clean.pdf, issued by PPP Canada, identified in Section 2 under "Qualitative Analysis" the need to include economic and social factors in the assessment of PPP projects.</p>
Affordability assessment, including the identification of the required long term public	Yes

commitments (explicit and implicit)	
Relevant legal/regulatory provision (if any)	The Procurement Analysis Guide in Section 4 on "Quantitative Analysis" discusses "P3 Model Cost Estimates." The factors that would be highlighted in this analysis would ensure the operation, maintenance and lifecycle services are paid for by the Procuring Authority and the payments are referred to as the Non-Capital Annual Service Payment (Non-Capital ASP). Similar to the Capital ASP, the Non-Capital ASPs are made regularly on a monthly or quarterly basis. There is no financing element associated with the Non-Capital ASP. The total of the Capital ASP and Non-Capital ASP is simply referred to as the Annual Service Payment (ASP). The calculation of the Capital ASP and Non-Capital ASP are the main components of this analysis.
Is there a specific methodology?	Yes
If yes, elaborate	The Federal Procurement Analysis Guide in Section 4 on "Quantitative Analysis" discusses "P3 Model Cost Estimates." The factors that would be highlighted in this analysis would ensure the operation, maintenance and lifecycle services are paid for by the Procuring Authority and the payments are referred to as the Non-Capital Annual Service Payment (Non-Capital ASP). Similar to the Capital ASP, the Non-Capital ASPs are made regularly on a monthly or quarterly basis. There is no financing element associated with the Non-Capital ASP. The total of the Capital ASP and Non-Capital ASP is simply referred to as the Annual Service Payment (ASP). The calculation of the Capital ASP and Non-Capital ASP are the main components of this analysis. The Canadian Cost-Benefit Analysis Guide: Regulatory Proposals also provides a cost benefit analysis guide in Step 4. And the Federal Identifying PPPs Guide identifies affordability criteria in Criterion 13 under "Life-Cycle Costs."
Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	According to the PPP Screening criteria in Section 5 of the Federal Implementing Guidelines, the "The potential value of a P3 delivery model is heavily dependent on the ability to identify and allocate risks. While a full risk assessment will be undertaken as part of the value for money analysis, departments and agencies are encouraged to conduct a preliminary review of potential risks as part of the P3 screen. It will be helpful to assess whether there may be opportunities to transfer these risks to the private sector and to determine the extent to which the investment will benefit from the transfer of risks. Risks that the private sector may be in a better position to manage include, for example, those related to design, construction, recapitalization, and timeline. The public sector is often in the best position to manage demand-related risks."
Is there a specific methodology?	Yes
If yes, elaborate	Section 3.5 of the Business Case Guide outlines risk assessment factors. Step 5 of the Federal Procurement Analysis Guide details this assessment under "Risk Analysis and Quantification."
Financial viability or bankability assessment.	Yes
Relevant legal/regulatory provision (if any)	Section 5 of the Federal Implementing Guidelines highlight the importance of assessing the "Financial or Funding Considerations" as part of the PPP screening process.

Is there a specific methodology?	No
If yes, elaborate	n/a
Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives	Yes
Relevant legal/regulatory provision (if any)	Section 6 of the Federal Implementing Guidelines provides in 6.2, "Value for money analysis essentially represents a risk-adjusted comparison of the costs and benefits of different investment options. While the distinction between value for money analysis and the development of the business case varies, for the purpose of this guide, value for money analysis is seen as an input into the development of the business case. The business case combines the analysis of requirements and screening with a preliminary value for money analysis that includes qualitative, quantitative, and risk factors."
Is there a specific methodology?	Yes
If yes, elaborate	Sections 6.3 and 6.4 of the Federal Implementing Guidelines detail the comparative assessment analysis standards.
Market assessment (showing evidence of enough interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	The Federal Implementing Guidelines provide under Section 5 entitled "Budget 2011 and P3 Screening," the "Private Sector Interest and Capacity: It is important to determine as early as possible whether there will be private sector interest in the potential investment because the value proposition of a P3 is enhanced by competition. Requests for expressions of interest and other forms of market sounding are often used as tools to assess market interest. Private sector interest is a primary driver in the ability of the model to deliver value; the level of interest depends on a variety of factors including the considerations outlined in this section."
Is there a specific methodology?	Yes
If yes, elaborate	<p>Details of market assessment of what is referred to as "market sounding" is outlined in Section 3.0 Step 4 of the Business Case Development Model. Additionally, Section 3 of the Procurement Analysis Guide also addresses market sounding, and sets the objective of this assessment to:</p> <ul style="list-style-type: none"> - Outline the Procuring Authority's overall strategy for engaging with market sounding participants; - Describe the process used to identify market sounding participants to ensure that selected participants are appropriate. A list of market sounding participants should be included; - Describe the process used to conduct market soundings, including details about the project related information provided to participants in advance of the meeting, the role of the Procuring Authority during meetings; questions asked; and

	- Provide information on the Procuring Authority's plan for follow-up consultations and refreshes.
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):	<p>According to the Federal Procurement Services Act, "(3) The minister may recommend to government, government organizations and local public bodies</p> <p>(a) practices,</p> <p>(b) the form and content of agreements, and</p> <p>(c) arrangements that promote fair and open procurement, competition, demand aggregation, value for money, transparency and accountability."</p> <p>Additionally, Section 12.4.2 of the Contracting Policies provides, "12.4.2 As stated in article 4.2, the Standard Government Construction Contract has been prescribed for all construction contracts that exceed \$100,000. The basic policy governing the principles and expression of the Standard Government Construction Contract is the prerogative of the Treasury Board. However, the style and content are the responsibility of the Public Works and Government Services Canada."</p>
If no, please elaborate (provide examples):	n/a
Have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	Standardized contracts have been developed at the federal level. Federal "templates" can be found at PPP Canada: http://www.p3canada.ca/
Does the procuring authority obtain the permits necessary to develop and operate the PPP project before calling for tenders in any of the following areas? Environmental permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Urban and zoning permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other permits.	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide explanation):	n/a
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Right of way	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice.
If no, please elaborate (provide explanation):	n/a
Does the regulatory framework establish any exceptions where the preparation process described above does not apply or allows for a “fast track” procedure?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
What is the average number of calendar days that the procuring authority spends on each of the following activities to prepare a PPP project? Conducting the required assessments:	260
Obtaining the required approvals from other relevant authorities:	120
Preparing the draft PPP contract:	180
Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:	120
PPP Procurement	Score: 93

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)	According to the Federal Conflict of Interest Act, Part 2 on Compliance Measures, these measures shall include providing confidential reports on employment history and asset possession, sign a Value of Ethics Code for the Public Sector, and disclose political activity intentions. The qualifications in the regulatory framework relate more to conflict of interest requirements, where contributors provided that committee members are normally selected from the employees of the relevant procurement authority and government department, along with external advisors, and would have to abide by general rules on conflict of interests.
If no, please elaborate (provide examples):	n/a
If yes, which of the following options best describes the required qualifications of the committee members? (Please select only one). The regulatory framework details the qualifications required and/or the specific membership of the bid evaluation committee.	No
If yes, please specify:	n/a
The regulatory framework requires generally sufficient qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.	Yes
The regulatory framework does not include any provisions.	No
Other	No
please specify:	n/a
Does the procuring authority issue a public procurement notice of the PPP?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	The Canadian Agreement on Internal Trade (Consolidated Version 2015) in Article 506 of this Agreement provides that: "2. A call for tenders shall be made through one or both of the following methods, which may be supplemented with any other notification method, such as newspapers or trade journal publications: (a) the use of an electronic tendering system that is equally accessible to all Canadian suppliers; (b) the notices of a call for tenders shall be available to suppliers free of charge; (c) the use of source lists, provided that, in respect of any source list: (i) registration on the source list is consistent with Article 504; (ii) all registered suppliers in a given category are invited to respond to all calls for

	<p>tenders in that category; and</p> <p>(iii) a supplier that meets the conditions for registration on the source list is able to register at any time.</p> <p>3. Each Party shall designate the electronic tendering system referred to in paragraph 2(a) that its covered entities will use when making its calls for tenders. If a Party decides to change the designation of the electronic tendering system, it shall notify the other Parties at least 30 days prior to implementing that change."</p> <p>Publicly-available procurement websites are (e.g. MERX, Bid-N-Go, https://buyandsell.gc.ca/procurement-data/tender).</p>
If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	https://buyandsell.gc.ca/procurement-data/tenders
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):	Contributors have identified that the minimum periods are provided in the request for qualifications or proposals. Nonetheless, the Canadian Internal Trade Agreement Section 506 provides, "5. Each Party shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information and the complexity of the procurement."
and the time in calendar days :	n/a
Do the tender documents detail the stages of the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 10.7.41 of the Contracting Policies, "Call for tenders under the Agreement on Internal Trade. A notice of a call for tenders shall contain at least the following information:</p> <p>a brief description of the procurement contemplated;</p> <p>the place where a person may obtain information and tender documents;</p> <p>the conditions for obtaining the tender documents;</p> <p>the place where the tenders are to be sent;</p> <p>the date and time limit for submitting tenders;</p> <p>the time and place of the opening of the tenders in the event of a public opening, and a statement that the procurement is subject to the AIT."</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):	The Federal Contracting Policies provide, "10.7.20 Pre-qualification of bidders. When the size or complexity of a project necessitates further special assurance of the

	<p>contractor's ability, all necessary tests of the competence of prospective contractors may be made in advance. Bids are then invited only from the firms that have qualified. The possibility of disqualifying a firm after it has incurred a considerable expense in bidding on a large special project is thereby reduced or eliminated." Many of the contributors provided that the pre-qualification stage is standard procurement practice in most Canadian jurisdictions.</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>According to Section 10.7.1 of the Federal Contracting Policies, "Equal opportunity for all contractors. In accordance with the policy statement to reflect fairness in spending public funds and the requirements under the trade agreements, the method of procurement used for a particular acquisition must, within the limits of practicality, give all qualified firms an equal opportunity for access to government business."</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>The Federal Contracting Policies in Section 10.8.22 provide, "Forwarding of Tender Documentation by the Entities under the North American Free Trade Agreement and the World Trade Organization - Agreement on Government Procurement. The respective agreements require that in open and selective procedures, contracting authorities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating hereto."</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>General rules on transparency and fairness of the bidding process would apply according to Section 10.7.27 of the Federal Contracting Policies, which stipulate, "The principle of applying bid criteria or requirements equally to all bidders is part of Canadian contract law and is applicable to both the public as well as the private sectors. Fairness to all prospective contractors and transparency in the award process are imperative." As for the proprietary information that may harm certain bidders, contributors have explained that for RFQs the answer is generally they are shared with all bidders. In RFPs there are two types of questions, (a) those that are not</p>

	<p>confidential and the responses go to all bidders. The second type of question are commercial in confidence questions. The responses to those questions only go to the proponent who submitted the question. Proponents indicate which category they think their question falls into. It is the public sector which must decide if they agree with the classification of the question or not.</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>All 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>Practice.</p>
<p>If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<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>	<p>None of the projects.</p>
<p>Does the procuring authority require the bidders to prepare and present a financial model with their proposals?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to PPP Canada: New Building Canada Fund: Procurement Options Analysis Guide, it addresses "P3 model Cost Estimates", Section 2.1.1.2 on Bid Preparation provides, "The scope of P3 projects increases the amount of work required to prepare bids when compared to PSC model. Private partners must respond to design, construction, financing and operations/maintenance requirements, ensuring that each element forms a single, cohesive proposal. This additional effort translates into significant additional costs to the private partner."</p>

	<p>Contributors provided that the financial model must detail the nature of the payments made by the authority and what these payments cover, more specifically:</p> <ul style="list-style-type: none"> - Provide financial projections (cost and revenue) on a monthly basis from Financial Close until the end of the Project Agreement - Macroeconomic assumption schedules - Capital and operating costs - Taxation details - Payment mechanism - Key dates to Financial Close - A set of required outputs in the pre-specified format - RFP evaluation forms - Financial statements
<p>If no, please elaborate (provide examples):</p>	<p>n/a</p>
<p>Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 10.7.27 of the Federal Contracting Policies, which stipulate, "The principle of applying bid criteria or requirements equally to all bidders is part of Canadian contract law and is applicable to both the public as well as the private sectors. Fairness to all prospective contractors and transparency in the award process are imperative." Reference could also be made to the Supreme Court of Canada's judgment on the law of tender in Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), 2010 SCC 4 (CanLII), [2010] 1 S.C.R. 69. (Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), [2010] 1 SCR 69, 2010 SCC 4 (CanLII), <http://canlii.ca/t/27zz2>, retrieved on 2016-03-30) provides a helpful overview of the law of tender, at para. 87:</p> <p>For almost three decades, the law governing a structured bidding process has been dominated by the concept of Contract A/Contract B initially formulated in The Queen in right of Ontario v. Ron Engineering & Construction (Eastern) Ltd., 1981 CanLII 17 (SCC), [1981] 1 S.C.R. 111. The analysis advanced by Estey J. in that case was that the bidding process, as defined by the terms of the tender call, may create contractual relations ("Contract A") prior in time and quite independently of the contract that is the actual subject matter of the bid ("Contract B"). Breach of Contract A may, depending on its terms, give rise to contractual remedies for non-performance even if Contract B is never entered into or, as in the present case, it is awarded to a competitor. The result of this legal construct is to provide unsuccessful bidders with a contractual remedy against an owner who departs from its own bidding rules. Contract A, however, arises (if at all) as a matter of interpretation. It is not imposed as a rule of law. [Emphasis in original.]"</p>
<p>Among the PPP procurement processes conducted within the last two (2) years, in how many of them was the evaluation of the bidders conducted in accordance with</p>	<p>All of the projects.</p>

the criteria stated in the tender documents? Please elaborate:	
In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 10.8.10 of the Federal Contracting Policies, "When only one valid bid has been received, that bidder may also be asked to provide price substantiation. If the information provided is not acceptable to the contracting authority, then price negotiation should take place. If the single bidder does not appear to have the requisite financial stability, it may be in the public interest to require the bidder to submit an appropriate form of security before the bid is considered. Another alternative would be to invite new bids."
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.	Yes
Please specify:	According to Section 10.8.10 of the Federal Contracting Policies, "When only one valid bid has been received, that bidder may also be asked to provide price substantiation. If the information provided is not acceptable to the contracting authority, then price negotiation should take place. If the single bidder does not appear to have the requisite financial stability, it may be in the public interest to require the bidder to submit an appropriate form of security before the bid is considered. Another alternative would be to invite new bids."
The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.	No
The regulatory framework does not include any provisions.	No
Other	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:	425
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):	<p>Contributors have provided that the awards are published electronically on the federal level on http://www.p3canada.ca/en/about-us/media-room/. Section 10.7.31 of the Federal Contracting Policy provides, "10.7.31 In order to demonstrate the requirement for access and openness in government contracting, contracting authorities are encouraged to publish an Advance Contract Award Notice (ACAN) for contracts with pre-identified contractors using electronic bidding methodology. If no statements of capabilities meeting the requirements set out in the ACAN are received within fifteen calendar days, the contract is deemed to be competitive and the higher electronic bidding dollar levels apply."</p>
If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	https://buyandsell.gc.ca/
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):	<p>According to Section 10.8.21 of the Federal Contracting Policies, "Debriefings should be provided to unsuccessful bidders on request and should normally include an outline of the factors and criteria used in the evaluation, while respecting each bidder's right to the confidentiality of specific information". Additionally, judicial decisions provide a basis for this. In Canadian Federal Courts, the Khoury Real Estate Services Ltd. v. Canada (Public Works and Government Services), 1996 CanLII 11863 (FC) (Federal Court of Canada Trial Division) http://canlii.ca/t/g07wb discusses this aspect in its application of the Freedom of Information and Protection of Privacy Act (R.S.O. 1990, c. F.31, as amended) and the Court explains, "Protection of proprietary information and ensuring an appropriate measure of confidentiality concerning details of different proposals are accepted aspects of the process of tendering in response to invitations to contract. At the same time, courts have traditionally intervened at least in the award of public contracts where there is unfairness in the process (Assaly (Thomas C.) Corp. v. Canada, [1990] 34 F.T.R. 156 (F.C.T.D.)), or possibly for other reasons necessary to ensure the integrity of the process. Clearly, judicial review of decisions made in the contracting of work by federal public authorities is within this Court's jurisdiction (Gestion Complexe Cousineau (1989) v. Canada, 1995 CanLII 3600 (FCA), [1995] 2 F.C. 694 at 702-703, per Décaré J.A.). It is due to the necessity of ensuring fairness in the process that tenders submitted on projects that are defined in detail ordinarily lead, on opening of the bids, to publication of the tender prices submitted. That ensures for all who have submitted a tender that their tender has been received and evaluated in relation to cost at the</p>

	<p>prices they have set, and it also indicates where their tender ranks, in terms of price, in relation to others. In that process, the cost or price is that determined by the party submitting the tender." The Court further applies these standards to the facts of the case, which concerned a residential development project conducted under a PPP project and clarifies: "That is not the process followed in this case. Here, the Request for Proposals invited bidders to submit their detailed proposals to meet objectives established for the project. No overall standard method for achieving these objectives was set, and thus, the various proposals were evaluated, in accord with criteria and a marking system described adequately in the Request for Proposals. The outcome of that assessment by PWGSC was not made public, except that each tenderer was offered a debriefing concerning the assessment of its own project only, and a listing, in order, of how the department ranked the several submissions made. That process is not comparable, in my view, to that followed with respect to tenders on defined projects. The comparison with other bids in the latter case is relatively easy, made on the basis of comparative prices established by each one. In this case, the marks assigned in the evaluation process by PWGSC staff were not revealed except, for each project, in the debriefing session with the respective proposer." Ultimately, the Court decides, " However, in the interest of fairness to the applicants, who have spent a substantial sum in preparation of a tender and who held property for development of the project, an order will go directing PWGSC to provide information permitting general comparison of marks assigned to the applicants' project proposal with a general measure, such as the range, or the average, or the median of marks assigned to all proposals. The most appropriate comparative information in regards to its assessments of the various proposals to be released to the applicants, and any other tenderer that is interested, I leave to be determined by the respondents."</p>
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):	According to Section 10.8.21 of the Federal Contracting Policies, "Debriefings should be provided to unsuccessful bidders on request and should normally include an outline of the factors and criteria used in the evaluation, while respecting each bidder's right to the confidentiality of specific information."
Does the regulatory framework restrict or regulate in any way negotiations with the selected bidder between the award and the signature of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to Section 10.8.14 of the Federal Contracting Policy, "As stated in article 4.2, modifications are not acceptable under any circumstances after bid closing."
Among the PPP procurement processes conducted within the last two (2) years, in how	None of the projects.

many of them were the terms and conditions changed between the award and the signature of the PPP contract? Please elaborate:	
Does the procuring authority publish the PPP contract?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Practice.
If yes, is it published online?	Yes
If yes, please specify the website:	https://buyandsell.gc.ca/
Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a “fast track” procedure?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Unsolicited proposals	Score: USP not regulated
Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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:	n/a
Does the procuring authority conduct an assessment to evaluate unsolicited proposals?	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a

If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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.	n/a
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.	n/a
The regulatory framework does not include any provisions.	n/a
Other	n/a
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:	n/a
Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the	n/a

proponent) to prepare their proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
Does the procuring authority use any of the following mechanisms to reward/compensate the presentation of unsolicited proposals? (Check all that apply): Access to the best and final offer.	n/a
Developer's fee (reimbursing the original proponent for the project development cost).	n/a
Bid bonus.	n/a
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	n/a
Other	n/a
please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	Score: 63
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)	<p>According to Section 3 of the Treasury Board of Canada Secretariat's Policy on the Management of Contracts (2007, and amended in 2009) http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18229 provides [hereinafter "Federal Management Policy"], "3.4 This policy is issued pursuant to section 7 of the Financial Administration Act.</p> <p>3.5 Ministers are responsible for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behavior and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honor of the Crown is upheld."</p> <p>Section 6.1.6 of the Federal Management Policy also provides, "Project-based</p>

	<p>procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes."</p>
<p>If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>The general provisions would encompass this. Accordingly, Step 5 of the Federal PPP Canada Business Case Guide addresses "Managing the Investment" and provides, "The objective of Step 5, the important final step in the business case development process, is to describe—at a strategic level—how the investment, project, initiative, or event will be managed, while also demonstrating an acceptable level of due diligence.</p> <p>Step 5 of the Federal PPP Canada Business Case Guide refers to the business case being supported by a Project Charter and a Project Management Plan that will address the organizational, tactical, and operational elements related to the management of the project, including project governance.</p> <p>And according to Section 3 of the Federal Management Policy, "3.4 This policy is issued pursuant to section 7 of the Financial Administration Act.</p> <p>3.5 Ministers have responsibility for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behavior and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honor of the Crown is upheld."</p>
<p>Participation of the members of the PPP contract management team in the PPP procurement process.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Section 3 of the Federal Management Policy, "3.4 This policy is issued pursuant to section 7 of the Financial Administration Act.</p> <p>3.5 Ministers have responsibility for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behavior and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honor of the Crown is upheld."</p> <p>Section 6.1.6 of the Federal Management Policy also provides, "Project-based</p>

	<p>procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes."</p>
<p>Possibility to consult with PPP procurement experts when managing the PPP contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Practice</p>
<p>Elaboration of a PPP implementation manual or an equivalent document.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Step 5 of the Federal PPP Canada Business Case Guide addresses "Managing the Investment" and provides,</p> <p>"The objective of Step 5, the important final step in the business case development process, is to describe—at a strategic level—how the investment, project, initiative, or event will be managed, while also demonstrating an acceptable level of due diligence.</p> <p>A secondary goal of Step 5 is to further reinforce the key messages of the business case, ensuring its soundness and conformity to commonly acknowledged best practices for business.</p> <p>Once approved, the business case will be supported by a Project Charter and a Project Management Plan that will address the organizational, tactical, and operational elements related to the management of the project, including project governance.</p>
<p>Other</p>	<p>No</p>
<p>please specify:</p>	<p>n/a</p>
<p>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:</p>	<p>All of the projects</p>
<p>Does the procuring or contract management authority establish a monitoring and evaluation system 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 5.1 of the Federal Contracting Policy, "5.1.1 It is the responsibility of departments and agencies to ensure that adequate control frameworks for due diligence and effective stewardship of public funds are in place and working. Treasury Board Secretariat works with departments and agencies to address management issues and compliance with Contracting Policies identified through its ongoing relationships with departments, management reviews, evaluations, internal audits and transactions." Additionally, Step 5 of the Federal PPP</p>

Canada Business Case Guide addresses "Managing the Investment" and provides, "The objective of Step 5, the important final step in the business case development process, is to describe—at a strategic level—how the investment, project, initiative, or event will be managed, while also demonstrating an acceptable level of due diligence.

A secondary goal of Step 5 is to further reinforce the key messages of the business case, ensuring its soundness and conformity to commonly acknowledged best practices for business.

Once approved, the business case will be supported by a Project Charter and a Project Management Plan that will address the organizational, tactical, and operational elements

related to the management of the project, including project governance.

The following subsections provide guidance on how investment management should be described in terms of strategies and how to illustrate that critical project management fundamentals and methodologies have been well thought out and are in place before the launch of the project:

- 4 Governance and Oversight
- 4 Project Management Strategy
- 4 Outcome Management Strategy
- 4 Risk Management Strategy
- 4 Change Management Strategy
- 4 Performance Measurement Strategy."

And according to Section 3 of the Treasury Board of Canada Secretariat's Policy on the Management of Contracts (2007, and amended in 2009) <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18229> provides [hereinafter "Federal Management Policy"], "3.4 This policy is issued pursuant to section 7 of the Financial Administration Act.

3.5 Ministers have responsibility for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behavior and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honor of the Crown is upheld."

Section 6.1.6 of the Federal Management Policy also provides, "Project-based procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes."

Section 6.1.1 of the Federal Management Policy provides that Deputy heads in the Government of Canada are responsible for ensuring that: "A department-wide governance and oversight mechanism is in place, documented and maintained. The mechanism is used to manage the initiation, planning, execution, control and closing

	<p>of projects. In addition, the mechanism ensures that opportunities are considered for integrating projects across the department and the Government of Canada."</p> <p>6.1.6 of the Federal Management Policy also provides, "Project-based procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes."</p>
<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.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Practice.</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>The subsections of the business case study as in Step 5 of the Federal PPP Canada Business Case Guide provide guidance on how investment management should be described in terms of strategies and how to illustrate that critical project management fundamentals and methodologies have been well thought out and are in place before the launch of the project:</p> <p>4 Performance Measurement Strategy."</p>
<p>The procuring or contract management authority must establish a risk mitigation mechanism.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>The Federal Treasury Board of Canada Secretariat issued the Framework for the Management of Risk (2010), which provides in Section 4, "The purpose of this Framework is to provide guidance to Deputy Heads on the implementation of effective risk management practices at all levels of their organization. This will support strategic priority setting and resource allocation, informed decisions with respect to risk tolerance, and improved results.</p> <p>To achieve this purpose, the Framework provides principles and guidance for Deputy Heads to consider in their role as leaders of sound risk management practices and risk management integration within their organizations. For the purposes of the Framework, departments and agencies are those defined in section 2 of the Financial Administration Act.</p> <p>Effective risk management, supported by this Framework, and associated learning</p>

	<p>resources, will enable Deputy Heads to:</p> <p>Identify and explain different types of risks at all levels of their organization and how they can be managed;</p> <p>Provide guidance on setting risk tolerance levels and making decisions informed by considerations of risk and mitigation strategies, including who should be involved;</p> <p>Support learning opportunities in their organization, including informal and formal risk management practices that respond to the needs and culture of their organizations;</p> <p>Lead by example by embedding risk management principles and practices in the management of their organization; and</p> <p>Align their risk management practices with other Treasury Board management practices and policies."</p>
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:	Practice.
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.	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:	<p>On the Federal level, Section 12.9.1 of the Contracting Policies provide, "Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost." According to the Contracting Directives in Part 1, "When a contracting authority has entered into a contract, it may amend the contract without the approval of the Treasury Board, if the cumulative value of the amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Columns III, V, VII of Schedules 1, 2, or 3.</p> <p>When the Treasury Board has approved an amendment, the contracting authority may further amend the contract without the approval of the Treasury Board, if the cumulative value of such amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Column VII of Schedules 1, 2, or 3."</p>
If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>According to Section 10.8.19 of the Federal Contracting Policies, "Change in scope of work. When there are changes in the job requirements or in the funds available that reduce the scope of the work, an attempt should be made to negotiate a new price with the successful bidder. If the change in the scope of the work is significant or negotiations cannot be concluded to the satisfaction of the contracting authority, new bids should be invited. For construction contracts, new bids are normally invited from the two lowest bidders on the original bid solicitation. When more than two bidders have bid in the same approximate amounts, consideration should be given to including these firms on the new bid solicitation. For goods and services, it is often the practice to solicit new bids without limiting the field of competition."</p>

A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>On the Federal level, Section 12.9.1 of the Contracting Policies provide, "Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost." According to the Contracting Directives in Part 1, "When a contracting authority has entered into a contract, it may amend the contract without the approval of the Treasury Board, if the cumulative value of the amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Columns III, V, VII of Schedules 1, 2, or 3.</p> <p>When the Treasury Board has approved an amendment, the contracting authority may further amend the contract without the approval of the Treasury Board, if the cumulative value of such amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Column VII of Schedules 1, 2, or 3."</p>
A change in the investment plan or duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>On the Federal level, Section 12.9.1 of the Contracting Policies provide, "Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost." According to the Contracting Directives in Part 1, "When a contracting authority has entered into a contract, it may amend the contract without the approval of the Treasury Board, if the cumulative value of the amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Columns III, V, VII of Schedules 1, 2, or 3.</p> <p>When the Treasury Board has approved an amendment, the contracting authority may further amend the contract without the approval of the Treasury Board, if the cumulative value of such amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Column VII of Schedules 1, 2, or 3."</p>
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.	No

If yes, please provide the relevant legal/regulatory provisions:	n/a
Material Adverse government action.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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 Section of the Federal Contracting Policy, "12.8.1 The key factor when disputes arise is the expeditious handling of the disagreement. This is particularly important because prolonged disputes can delay performance as defined in the contract and payment to the contractor. As such, the Minister of Justice has committed to working with client departments to introduce Dispute Resolution (DR) clauses into the various contracts to which the Government is a party. To this end, the Directive Concerning the Use of Dispute Resolution Clauses in Contracts (the Directive) has been issued by the Department of Justice. The Directive states that, in advising client departments and in preparing contracts for client departments, Justice legal practitioners must make every effort to insert dispute resolution clauses into contracts, where appropriate. Dispute resolution clauses may range from provisions for resolution of disputes as they arise, by way of structured negotiations, to other alternatives such as mediation and arbitration. Any inquiries regarding the Directive Concerning Dispute Resolution policy or the appropriate clauses should be made to your departmental legal services unit of the Department of Justice.</p> <p>12.8.2 In a contract dispute, the decisions of the contracting authority made after the contract has been awarded, are challengeable in court. Under North American Free Trade Agreement, the World Trade Organization - Agreement on Government Procurement, the Agreement on Internal Trade, the bidding process can be challenged at the Canadian International Trade Tribunal. It is important, therefore, that legal advisers be consulted and that the actions of a contracting authority and its decisions on a contractor's claim be defensible in court.</p>

12.8.3 Negotiations. Efforts should be made to resolve disputes as they arise, first by negotiating with the contractor. This can be through discussion between representatives of the contractor and the contracting authority or by a more formal review established by the department or agency. Contracting authorities should develop systems that ensure:

prompt attention is given to disputes;
unresolved disputes are brought forward quickly to a designated senior level in the department or agency for decision; and
the decision is quickly communicated to the contractor so that the contractor may take further action if so desired.

12.8.4 Mediation. When a dispute has not been resolved by negotiation, mediation by a third party may be used when it is acceptable to both sides. Mediation should conform to the following principles:

it should be voluntary on the part of the contracting department or agency and the contractor with respect to entry into mediation, selection of mediator, and acceptance of the mediator's recommendations;
the powers of a mediator should be limited to persuasion and cannot include adjudication. (There should not, however, be any restriction on the mediator in terms of making contacts and collecting information relevant to the dispute);
the costs of mediation should be shared equally by both parties.

12.8.5 Arbitration. Arbitration that is binding on both parties is an alternative to litigation, provided that both the contractor and the contracting authority agree to it. The agreement to allow for its use may be inserted in a contract at the outset, or it may be negotiated between the parties at the time a dispute arises. If allowance is to be made for, or there is the prospect of arbitration, the contracting authorities should first discuss the details of it with their legal advisor. This advisor has guidelines from the Senior Assistant Deputy Minister, Legal Services, Commercial and Property Law, Department of Justice, covering the format (including procedures) and contents of an arbitration agreement and of any arbitration clause to be included in a contract.

12.8.6 Contracting authorities, with the advice of their legal advisor, may refer all questions of fact and certain questions of law to arbitration without the formal concurrence of the Department of Justice. Treasury Board approval is not required to use arbitration. Some of the questions of law which can now be the subject of arbitration include:

the formation, validity, interpretation, application or enforceability of the contract;
the performance, breach, termination or other discharge of the contract;
the rights, duties, obligations or remedies of the parties created by or pursuant to the contract;
any other issue of private law that may arise between the parties relative to the performance of the contract; or
the interpretation and application of statutes that relate primarily or solely to commercial transactions including, for example, the Commercial Arbitration Act and the International Sale of Goods Contracts Convention Act. Additionally, according to the Federal Contracting Policy.

<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 disputes arising during the implementation of the PPP.</p>	<p>Yes</p>
<p>If yes, please specify:</p>	<p>According to Section 12.8.1 of the Federal Contracting Policy, "The key factor when disputes arise is the expeditious handling of the disagreement. This is particularly important because prolonged disputes can delay performance as defined in the contract and payment to the contractor. As such, the Minister of Justice has committed to working with client departments to introduce Dispute Resolution (DR) clauses into the various contracts to which the Government is a party. To this end, the Directive Concerning the Use of Dispute Resolution Clauses in Contracts (the Directive) has been issued by the Department of Justice. The Directive states that, in advising client departments and in preparing contracts for client departments, Justice legal practitioners must make every effort to insert dispute resolution clauses into contracts, where appropriate. Dispute resolution clauses may range from provisions for resolution of disputes as they arise, by way of structured negotiations, to other alternatives such as mediation and arbitration. Any inquiries regarding the Directive Concerning Dispute Resolution policy or the appropriate clauses should be made to your departmental legal services unit of the Department of Justice.</p> <p>12.8.2 In a contract dispute, the decisions of the contracting authority made after the contract has been awarded, are challengeable in court. Under North American Free Trade Agreement, the World Trade Organization - Agreement on Government Procurement, the Agreement on Internal Trade, the bidding process can be challenged at the Canadian International Trade Tribunal. It is important, therefore, that legal advisers be consulted and that the actions of a contracting authority and its decisions on a contractor's claim be defensible in court.</p> <p>12.8.3 Negotiations. Efforts should be made to resolve disputes as they arise, first by negotiating with the contractor. This can be through discussion between representatives of the contractor and the contracting authority or by a more formal review established by the department or agency. Contracting authorities should develop systems that ensure:</p> <p>prompt attention is given to disputes; unresolved disputes are brought forward quickly to a designated senior level in the department or agency for decision; and the decision is quickly communicated to the contractor so that the contractor may take further action if so desired.</p> <p>12.8.4 Mediation. When a dispute has not been resolved by negotiation, mediation by a third party may be used when it is acceptable to both sides. Mediation should conform to the following principles:</p>

	<p>it should be voluntary on the part of the contracting department or agency and the contractor with respect to entry into mediation, selection of mediator, and acceptance of the mediator's recommendations;</p> <p>the powers of a mediator should be limited to persuasion and cannot include adjudication. (There should not, however, be any restriction on the mediator in terms of making contacts and collecting information relevant to the dispute);</p> <p>the costs of mediation should be shared equally by both parties.</p> <p>12.8.5 Arbitration. Arbitration that is binding on both parties is an alternative to litigation, provided that both the contractor and the contracting authority agree to it. The agreement to allow for its use may be inserted in a contract at the outset, or it may be negotiated between the parties at the time a dispute arises. If allowance is to be made for, or there is the prospect of arbitration, the contracting authorities should first discuss the details of it with their legal advisor. This advisor has guidelines from the Senior Assistant Deputy Minister, Legal Services, Commercial and Property Law, Department of Justice, covering the format (including procedures) and contents of an arbitration agreement and of any arbitration clause to be included in a contract.</p> <p>12.8.6 Contracting authorities, with the advice of their legal advisor, may refer all questions of fact and certain questions of law to arbitration without the formal concurrence of the Department of Justice. Treasury Board approval is not required to use arbitration. Some of the questions of law which can now be the subject of arbitration include:</p> <p>the formation, validity, interpretation, application or enforceability of the contract;</p> <p>the performance, breach, termination or other discharge of the contract;</p> <p>the rights, duties, obligations or remedies of the parties created by or pursuant to the contract;</p> <p>any other issue of private law that may arise between the parties relative to the performance of the contract; or</p> <p>the interpretation and application of statutes that relate primarily or solely to commercial transactions including, for example, the Commercial Arbitration Act and the International Sale of Goods Contracts Convention Act. Additionally, according to the Federal Contracting Policy.</p>
<p>The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.</p>	<p>No</p>
<p>The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.</p>	<p>No</p>
<p>Other</p>	<p>No</p>
<p>please specify:</p>	<p>n/a</p>
<p>Does the regulatory framework allow for the lenders to take control of the PPP project (lender step-in</p>	<p>Yes</p>

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:	Practice
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.	No
If yes, please specify:	n/a
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	Yes
please specify:	<p>Contributors have provided that lender step-in rights are addressed in the PPP project agreement with explicit reference to that in the regulatory framework. Further, due to the enforcement of a lenders' direct agreement (LDA), during the construction period there is a lenders Long Stop Date, where if substantial completion is not achieved, a number of provisions may put the project under threat of termination. Similar events are possible during the operating period, where there may be enforcement thresholds, which can triggered by lenders into an event of default. Lenders are often able to take control during an event of default, if not remediated during a specified period of time, which include the following:</p> <ul style="list-style-type: none"> - The occurrence of an insolvency event (e.g., covenant breach) - Project Co not performing a substantial portion of its business, resulting in a material adverse effect on its ability to perform its obligations under the Project Agreement - Project Co failing to achieve Substantial Completion by the Longstop Date (i.e. 365 days following the Scheduled Substantial Completion Date) - The Independent Certifier determining, with reference to the works schedule, that Project Co will not achieve Substantial Completion by the Longstop Date - Project Co failing to return to the Site within 3 days of a notice of abandonment from the PPP authority - Project Co exceeding a specified number of failure points over a certain period of time - Project Co failing to pay any sum due to the Authority under the Project Agreement, which exceed a specified amount

	- Project Co making a representation or warranty that is false or misleading and has or will have a material adverse effect on the performance of the operations
Does the regulatory framework expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify:	The PPP contracts regulates this circumstance in accordance with Section 12.4 of the Federal Contracting Policy, which provides, "12.4.1 All contract documents should contain conditions and clauses that reflect the requirements of the work to be produced or supplied under the contract. In addition, certain clauses are applicable for all contracts. As stated in article 4.2, Related requirements, other necessary clauses will include: a provision for paying interest when the Crown causes a delay in paying the contractor; a clause to permit the Crown to pay the Goods and Services Tax or the Harmonized Sales Tax; a clause covering possible conflict of interest situations; and, if relevant, a clause addressing intellectual property issues, including the ownership of intellectual property. An appropriate termination clause is especially important so that the contracting authority may end the contract if, for example, there is a change in the government's priorities or a cutback in funding. The Department of Justice representative in each department or agency should be consulted about contract terms."
and provide the relevant legal/regulatory provisions:	Section 12.4 of the Federal Contracting Policy
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:	Practice
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 be adopted AFTER June 1, 2016?	No
Please describe:	n/a