

**BENCHMARKING PPP PROCUREMENT 2017 IN FRANCE – PPP**

<b>Regulatory and Institutional Framework for PPPs</b>	
<b>Does the regulatory framework in your country allow procuring PPPs?</b>	Yes
<b>Yes. If yes, please specify the relevant regulatory framework and the year of adoption:</b>	In France, 2 categories of contracts are considered as PPP according to the World Bank definition: Concessions et Marchés de partenariat. Each of them as its own rules, deeply modified in 2015 and 2016, as a consequence of European union Directive (2014/23, 2014/24 and 2014/25 relating to Concessions and Marches publics). Marchés de partenariat are subject to the Ordinance n 2015-899 dated 23 July 2015 ("MP Ordinance") and its regulations ("MP Decree"). Article 67 of the MP Ordinance defines Marchés de partenariat as a contract by which the procuring authority entrusts an economic operator a global mission including construction (among others) and financing. The following analysis will be focused on those Marchés de partenariat, while concessions are studied separately. The previous regulatory framework was mainly made of Ordinance n° 2004-559 dated 17 June 2004 and the previous guidelines: Clausier-type (standard clauses) from the PPP Unit (MAPPP) dated 18 November 2011. Those guidelines are being modified and updated but should stay similar.
<b>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</b>	<a href="https://www.legifrance.gouv.fr">https://www.legifrance.gouv.fr</a>
<b>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.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Water and irrigation</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Energy generation and distribution</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Telecom</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Health</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Some public entities in the health sector are not allowed to use marchés de partenariat (article 71 of MP Ordinance).
<b>Education</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Other</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):</b>	Article 71 of the MP Ordinance authorizes any public buyer to procure MP except for the ones excluded by article 12 of Law dated 28 December 2010 (list of central administrations). For those who are excluded, the relevant Ministry will be the procuring entity (article 155 of the MP Decree).
<b>In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</b>	Yes
<b>If yes, please indicate its name, and its website (if available):</b>	Mission d'appui aux partenariats public-privés (MAPPP) <a href="http://www.economie.gouv.fr/ppp/english-version">http://www.economie.gouv.fr/ppp/english-version</a>
<b>If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.</b>	Yes
<b>PPP policy guidance and capacity building for other public authorities.</b>	Yes
<b>PPP promotion among the public and/or private sectors in national and international forums.</b>	Yes
<b>Technical support in implementing PPP projects.</b>	Yes
<b>Gatekeeping (approval of PPP projects).</b>	No
<b>Procurement of PPPs.</b>	No
<b>Oversight of PPP implementation.</b>	Yes
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Preparation of PPPs</b>	<b>Score:65</b>
<b>Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to article 155 of the MP Decree, for the State's projects, Ministry of budget and Ministry of Economy authorize the launching of the bidding process. Their agreement is considered acquired in the absence of a reply within one month.
<b>If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to article 156 of the MP Decree, Ministries in charge of budget and Economy shall approve the contract before signature in case of State's projects.
<b>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?</b>	No
<b>If yes, please specify the relevant authority</b>	n/a
<b>and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If yes, is a second approval by the same authority required before signing the PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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)?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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</b>	n/a

<b>other public investment priorities.</b>	
<b>If yes, please specify:</b>	n/a
<b>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.</b>	n/a
<b>The regulatory framework does not include any provisions.</b>	n/a
<b>Other</b>	n/a
<b>please specify:</b>	n/a
<b>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:</b>	Some of the projects
<b>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)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 2 of Decree 2013-1211 dated 23 December 2013 states that all projects of investment in the sense of the 1st article of the present decree is the object of a preliminary socioeconomic evaluation which has for objective to determine the costs and the profits expected from the project of envisaged investment.
<b>Is there a specific methodology?</b>	Yes
<b>If yes, elaborate.</b>	Report "Quinet" 2013 regarding socioeconomic evaluation of large public investment projects.
<b>Affordability assessment, including the identification of the required long term public commitments (explicit and implicit)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to article 148 of the MP Decree, the study includes in particular the estimated overall cost of the contract on an annual average.
<b>Is there a specific methodology?</b>	Yes
<b>If yes, elaborate</b>	Pursuant to article 148 of the MP Decree, the indication from this cost is compared to the annual cash flow of the procuring authority and its effect on its financial position, the impact of the contract on changes in mandatory spending of the procuring authority, its

	consequences on its debt and off-balance sheet and an analysis of costs resulting from early termination of the contract.
<b>Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to article 152 of the MP Decree, to demonstrate that the PPP balance is more favorable than other embodiments of this project possible, the procuring entity makes an overall assessment of the advantages and disadvantages of using a partnership contract, especially given the risk-sharing arrangements between the buyer and holder.
<b>Is there a specific methodology?</b>	Yes
<b>If yes, elaborate</b>	The PPP Unit's guidelines, which should be renovated to take into account the recent changes in the Law, identify specific risks to be assessed depending on the contract's sector in 4 categories: Conception, Operation, Maintenance, and Finance.
<b>Financial viability or bankability assessment.</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Practice
<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate</b>	n/a
<b>Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 40 of the MP Ordinance indicates that the buyer realizes, before the launch of the procurement procedure, an assessment designed to compare the various possible embodiments of the project. This assessment includes an analysis in the full cost and any element that informs the buyer in choosing the embodiment of this project. Pursuant to article 74 of the MP Ordinance, the decision to use a partnership contract, regardless of the investment amount, must be preceded by the completion of the evaluation of the project implementation method provided in article 40.
<b>Is there a specific methodology?</b>	Yes
<b>If yes, elaborate</b>	The PPP Unit Guidelines (Plan type du rapport d'évaluation préalable) gives methodological indications that include comparative elements of scope and schedule of the selected patterns ; Costs and any revenue enhancement ; Comparative analysis of the net present value of costs before taking into account currency risk ; Comparative analysis of the net present value of costs after taking into account currency risk.
<b>Market assessment (showing evidence of enough interest in the market for the project)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology?</b>	n/a
<b>If yes, elaborate</b>	n/a
<b>Among the PPP projects procured within the last two (2) years, for how many of</b>	Most of the projects

<p>them were all of the required assessments conducted? Please elaborate:</p>	
<p>Does the procuring authority include a draft PPP contract in the request for proposals?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	Practice
<p>If no, please elaborate (provide examples):</p>	n/a
<p>Have standardized PPP model contracts and/or transaction documents been developed?</p>	Yes
<p>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</p>	<p><a href="http://www.economie.gouv.fr/ppp/outils-0">http://www.economie.gouv.fr/ppp/outils-0</a> That website provides standards for Financial model and standard provisions.</p>
<p>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.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Urban and zoning permits.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Other permits.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to article 85 I. of the MP Ordinance, when the partnership contract includes occupation of public property, this implies an authorization to occupy this area for its duration. The holder, unless otherwise specified in this contract, has property rights over the works and equipment it carries. These rights give him the powers and obligations of the owner, under the conditions and limits defined by the contract clauses designed to ensure the integrity and the allocation of public property.</p>
<p>If no, please elaborate (provide explanation):</p>	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):	According to article 85 I. of the MP Ordinance, when the partnership contract includes occupation of public property, this implies an authorization to occupy this area for its duration. The holder, unless otherwise specified in this contract, has property rights over the works and equipment it carries. These rights give him the powers and obligations of the owner, under the conditions and limits defined by the contract clauses designed to ensure the integrity and the allocation of public property.
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:	274
Obtaining the required approvals from other relevant authorities:	296.5
Preparing the draft PPP contract:	60
Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:	204
<b>PPP Procurement</b>	<b>Score:80</b>
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)	Practice
If no, please elaborate (provide examples):	n/a

<b>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.</b>	No
<b>If yes, please specify:</b>	n/a
<b>The regulatory framework requires generally sufficient qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.</b>	No
<b>The regulatory framework does not include any provisions.</b>	Yes
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Does the procuring authority issue a public procurement notice of the PPP?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 33 of the MP Decree, the call for tenders notice shall be published in the Official Journal of European Union and in the official bulletin of public procurement (Bulletin officiel des annonces des marchés publics).
<b>If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.boamp.fr/">http://www.boamp.fr/</a> and <a href="http://eur-lex.europa.eu/oj/direct-access.html?locale=fr">http://eur-lex.europa.eu/oj/direct-access.html?locale=fr</a>
<b>Does the procuring authority grant the potential bidders a minimum period of time to submit their bids?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 72 II. of the MP Decree requires a period of thirty days from the date of dispatch of the invitation to tender. However, if the contracting authority has published a prior information notice which is not used as a notice of appeal to the competition, this minimum period may be reduced to ten days, when the prior information notice satisfies the following conditions (...)
<b>and the time in calendar days :</b>	30
<b>Do the tender documents detail the stages of the procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice

<b>If no, please elaborate (provide examples):</b>	n/a
<b>Does the procurement process include a pre-qualification stage to select a number of qualified bidders to present the full proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to article 66 of the MP Decree, the call for tenders is open where all interested economic operators may submit a tender. The tender is restricted when only those selected by the buyer may submit a tender. The choice between the two forms of bidding is free.
<b>If yes, do the tender documents specify the prequalification criteria in order to make them available to all of the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to article 56 (5) of the MP Decree, are included in the invitation to tender at least : The ranking of criteria for awarding the public contract if such information is not included in the tender documents.
<b>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</b>	All of the projects
<b>Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 39 III. of the MP Decree, the additional information on the tender documents are sent to parties six days later than the deadline for receipt of tenders, provided that they have made the request in time. When the deadline for receipt of tenders is reduced due to emergency, this period is four days. Article 43 II. and III. (1) further indicates that where tenders can be lodged only after a visit to places of execution of the public contract or after on-site additional documents, deadlines for receipt of tenders are adapted to allow all economic operators to learn about all the necessary information for preparing their tenders.
<b>If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Transparency and equality of treatment principles. It is a general principle of law in France to ensure fairness of the procurement procedures. Confidentiality rules can prevent the publication.
<b>Among the PPP procurement processes conducted within the last two (2) years where</b>	Most of the projects

<p>questions were submitted, in how many were the questions and clarifications disclosed to all of the potential bidders? Please elaborate:</p>	
<p>Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?</p>	Yes
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	Competitive dialogue is regulated by articles 75 and 76 of the MP Decree. Competitive dialogue is the procedure in which the buyer dialogues with the candidates admitted to participate in the procedure to define or develop one or more solutions likely to meet its requirements and on the basis of which or from which the dialogue participants are invited to submit tenders.
<p>If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	Charter for competitive dialogue dated 18 January 2007 indicates that general answers shall be disclosed to other bidders (Article 7, ii.), while confidentiality must be kept for innovations and proposals.
<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>	Some of the projects
<p>Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	Practice
<p>If no, please elaborate (provide examples):</p>	n/a
<p>Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	General principle of Law, Courts ensure its applicability. For examples: Conseil d'Etat n°287198 dated 20 October 2006 - Communauté d'agglomération Salon-Étang de Berre-Durance and CE, 18 June 2010, n°337377, Commune de Saint Pal de Mons: Section II of article 53 of the Public Procurement Code requires the contracting authority to inform applicants for contracts awarded under a formalized procedure other than the competition of the selection criteria of offers and their weight or their prioritization.

	Where the contracting authority decides to implement these criteria, to make use of weighted or prioritized sub-criteria, it is required to bring to the attention of candidates weighting or prioritization of these sub-criteria when considering to their nature and importance of this weighting or ranking, they are likely to influence tenders submitted by the candidates and their selection, and must therefore themselves be regarded as selection criteria.
<b>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:</b>	Most of the projects
<b>In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<b>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.</b>	No
<b>Please specify:</b>	n/a
<b>The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	Yes
<b>The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.</b>	No
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a

<b>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:</b>	500
<b>Does the procuring authority publish the award notice?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Article 104 of the MP Decree requires the procuring authority to publish the award notice in the Official bulletin of public procurement (Bulletin officiel des annonces des marchés publics) and Official Journal of European union.
<b>If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.boamp.fr/">http://www.boamp.fr/</a> <a href="http://eur-lex.europa.eu/oj/direct-access.html?locale=fr;">http://eur-lex.europa.eu/oj/direct-access.html?locale=fr;</a>
<b>Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 99 of the MP Decree indicates that, as soon as it decides to reject a bid or offer, the procuring entity notifies each candidate or tenderer concerned with the rejection of his candidacy or tender, indicating the reasons for the rejection.
<b>If no, please elaborate (provide examples):</b>	n/a
<b>If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 99 of the MP Decree indicates that, as soon as she decides to reject a bid or offer, the procuring entity notifies each candidate or tenderer concerned with the rejection of his candidacy or tender, indicating the reasons for the rejection.
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Article 64 of the MP Decree states that it is possible, in agreement with the successful bidder to conduct a development component of the public contract before signing. However, this development cannot modify substantial features of the offer or the public contract, distort competition or have a discriminatory effect.
<b>Among the PPP procurement processes conducted within the last two (2) years, in how many of them were the terms and conditions changed</b>	Some of the projects

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):	According to article 56 of the MP Ordinance, essential data have to be published. Article 107 of the MP Decree further indicates that the procuring authority provides, on its buyer profile, unrestricted, direct and full access to the essential data of the concession agreement, including the following data [...]. These provisions are binding starting October 1, 2018. However, they are already applied by some procuring entities.
If yes, is it published online?	No
If yes, please specify the website:	n/a
Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a “fast track” procedure?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to article 39, 67, 69 70 and 72 of the MP Decree, in case of emergency, minimal period of times can be reduced, such as periods of time to submit a bid.
Unsolicited proposals	<b>Score: USP not regulated</b>
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

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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.</b>	n/a
<b>If yes, please specify:</b>	n/a
<b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b>	n/a
<b>The regulatory framework does not include any provisions.</b>	n/a
<b>Other</b>	n/a
<b>please specify:</b>	n/a
<b>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:</b>	n/a
<b>Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	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
<b>PPP Contract Management</b>	<b>Score: 68</b>
Has the procuring or contract management authority established a system to manage the implementation of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any)	Pursuant to article 88 II. of the MP Ordinance, the buyer has control over execution of the contract. This control occurs at least during and at the end of each execution phases.
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

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Elaboration of a PPP implementation manual or an equivalent document.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>If there is a contract management team, in how many of the PPP projects procured within the last two (2) years did the management system and tools fully inform the contract management team? Please elaborate:</b>	Some of the projects
<b>Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 88 of the MP Ordinance:</p> <p>I. - To enable the monitoring of the implementation of the partnership contract, an annual report is prepared by the owner. It is sent each year to the purchaser within forty-five days after the anniversary of the signing of the contract.</p> <p>II. - The buyer has control over the execution of the contract. This check occurs at least during and at the end of each mission execution phases under the contract and results in a report.</p>
<b>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.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Article 165 I. of the MP Decree, the report mentioned is established by the holder and must allow comparison between years it retraces and earlier. It includes in particular:</p> <ol style="list-style-type: none"> <li>1. The following economic and accounting data: (...)</li> <li>2. Monitoring of corresponding indicators: (...)</li> </ol>
<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract.</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 88 II. of the MP Ordinance, the buyer has control over the execution of the contract. This check occurs at least during and at the end of each mission execution phases under the contract and results in a report.
<b>The procuring or contract management authority must establish a risk mitigation mechanism.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<b>The PPP contract performance information must be available to the public.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Is PPP contract performance information publicly available online?</b>	No
<b>If yes, please specify the website:</b>	n/a
<b>Does the regulatory framework expressly regulate a change in the structure (i.e. stakeholder composition) of PPPCo?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 139 4. of the MP Decree, change of economic operator is possible in the following cases: a) Pursuant to a review clause or an option set to 1; b) In the case of an assignment of the procurement, after an original owner of the restructuring transaction, provided that such assignment does not entail other substantial modifications and is not performed in order to avoid the procurement obligations of advertising and competitive bidding. The new owner must meet the conditions that were set by the buyer for participation in the initial public procurement procedure.
<b>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).</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>In case of a change affecting the controlling interest, the replacing entity must meet the</b>	Yes

<b>same technical qualifications as the original operator.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to article 139 4. b. of the MP Decree, the new owner must meet the conditions that were set by the buyer for participation in the initial public procurement procedure.
<b>Flexibility to substitute non-controlling interest after the initial period.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions:</b>	Pursuant to article 139 of the MP Decree, modifications are possible in the following cases: <ul style="list-style-type: none"> <li>- Changes initially planned;</li> <li>- More services have become necessary;</li> <li>- Changes that a diligent buyer could not anticipate;</li> <li>- Replacement of initial owner of the contract;</li> <li>- Non substantial modifications;</li> <li>- Modification inferior to 10% of the contract price.</li> </ul>
<b>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.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to article 139 of the MP Decree, is forbidden an important modification of object (5. c.).
<b>A change in the risk allocation of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 139 5. b. of the MP Decree, a modification is substantial and, as a consequence, forbidden, if it changes economic balance of the concession in favor of the private party.
<b>A change in the investment plan or duration of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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.</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions:</b>	No specific provisions under the relevant legal framework but several decisions in administrative case law (CE 29 January 1909, Compagnie des messageries maritimes, case No. 17614; CE 9 December 1932, Compagnie des tramways de Cherbourg, case No. 89655: In case of a final upheaval of the contract's economy that is not a consequence of the contractors' will, it is a case of force majeure and in default of agreement, termination of the contract may be applied to the parties by the judge).
<b>Material Adverse government action.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	No specific provisions under the relevant legal framework but several decisions in administrative case law: "fait du prince" theory: CE, 20 mai 1904, Compagnie marseillaise de navigation. If the court recognizes the fact of the prince, it will grant the other party compensation fully repairing the damages suffered, provided however that the victim suffered harm specifically affecting the result or at least of interference with an essential element of administrative contract in question (i.e. the theory does not allow for compensation for loss resulting from normal hazards of the contract).
<b>Change in the Law.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	No specific provisions under the relevant legal framework but several decisions in administrative case law: "fait du prince" theory: CE, 20 mai 1904, Compagnie marseillaise de navigation. If the court recognizes the fact of the prince, it will grant the other party compensation fully repairing the damages suffered, provided however that the victim suffered harm specifically affecting the result or at least of interference with an essential element of administrative contract in question (i.e. the theory does not allow for compensation for loss resulting from normal hazards of the contract).
<b>Refinancing.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Article 46 of the Standard Clauses regulates refinancing requiring the private partner to inform and provide all necessary information to the procuring authority. The procuring authority will also have the right to oppose the refinancing to protect the public interest and the contract may establish a sharing of the benefits derived of the refinancing.
<b>Other.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions:</b>	n/a
<b>Does the regulatory framework establish a specific dispute resolution mechanism for PPPs?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions</b>	Administrative judges are always an option for parties of a public contract. Most of the time, private holders will have to turn to the procuring authority first, then the public administration. Furthermore, according to article 90 of the MP Ordinance, procuring authorities can use arbitration but the State needs to be authorized to use arbitration.
<b>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</b>	No

disputes arising during the implementation of the PPP.	
If yes, please specify:	n/a
The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.	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 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?	Yes
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:	Contract and financial practice
Does the regulatory framework expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify:	According to the Standard clauses, the Agreement terminates : - at the expiration of his normal term provided for in article 4.2;

	<ul style="list-style-type: none"> <li>- in case of judicial cancellation or termination as a result of a jurisdictional decision;</li> <li>- in case of termination for misconduct Partner, as provided in article 60;</li> <li>- in case of termination on grounds of general interest, as provided in article 61;</li> <li>- in case of termination for prolonged Force Majeure, as provided in article 62;</li> <li>- in case of termination by agreement, as provided in article 63.</li> </ul> <p>Those standard clauses are to be modified as a consequence of the new regulatory framework. However, since the grounds for termination are based on the jurisprudence, they should not substantially evolve.</p>
<b>and provide the relevant legal/regulatory provisions:</b>	Articles 4.2, 60, 61, 62, and 63 of the Standard clauses
<b>If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Article 89 of the MP Ordinance: In case of termination by a judge, the partnership contractor is entitled to compensation for expenses incurred pursuant to the contract, which may include financial expenses related to the financing put in place as part of the overall mission entrusted to the holder, provided that they have been useful to the buyer. This recognition of financial expenses is subject to the mention in the annexes of the partnership contract, clauses linking the holder to banks.
<b>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?</b>	Yes
<b>Please describe:</b>	Ordinance and Decree for Marches publics
<b>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?</b>	No
<b>Please describe:</b>	The French government contemplates the enactment of a Code de la commande publique which would be composed of the regulations applicable to both public procurement contracts and concession contracts (there is a bill in that respect named projet de loi Sapin 2).