

**BENCHMARKING PPP PROCUREMENT 2017 IN MALAWI**

<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 Malawi, PPPs are regulated by the Public-Private Partnerships Bill of 2010 ("PPP Bill"). This text is detailed by the PPP Policy Framework approved by Cabinet on 18 May 2011 ("Policy framework"). The Public Procurement Act and Rules are not applicable to PPPs.
<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="http://www.mitc.mw/attachments/article/357/PPP%20Policy.pdf">http://www.mitc.mw/attachments/article/357/PPP%20Policy.pdf</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>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<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</b>	n/a

<b>provisions:</b>	
<b>Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):</b>	Pursuant to section 2 of the PPP Bill, “Contracting Authority” means any Ministry, Government Department, Local Authority or State Owned Enterprise.
<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>	PPP Center (Part III of the PPP Bill and section 9.1.5 of the policy guidelines) <a href="http://www.pppc.mw/">http://www.pppc.mw/</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>	Score: 65
<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>	<p>Pursuant to section 23 (1) of the PPP Bill, without prejudice to the functions of a Contracting Authority under any written law, the Commission or a Contracting Authority, (c) submit the feasibility study to the Minister responsible for finance through the Commission for its approval;</p> <p>Ministries and Contracting Authorities will require the approval of Cabinet through the Ministry of Finance in order to embark on projects with high social content or those that have a major positive impact on poverty alleviation and requiring Government subsidies to ensure the provision of the services (Policy framework, 8.1.).</p>
<b>If yes, is a second approval by</b>	Yes

<b>the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 8.4 of the Policy framework related to Management of Government's Obligations, Government shall take steps to institute mechanisms to ensure that its financial obligations under PPPs, having been approved by the Ministry of Finance [...]
<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>	Yes
<b>If yes, please specify the relevant authority</b>	Cabinet for non financially viable projects
<b>and provide the relevant legal/regulatory provisions (if any):</b>	It is also GoM's intention to support projects that fall within its national development agenda and are economically and socially (projects having major impact on poverty alleviation) justified but not financially viable. Cabinet approval is required for such projects (Policy framework, 8.3 Viability Gap Scheme (VGS)).
<b>If yes, is a second approval by the same authority required before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Line minister, Cabinet, regulatory authorities  Pursuant to section 29 (1) of the PPP Bill, the Public Private Partnership contract may be concluded solely on the basis of a decision by the Commission and the consent obtained from the Minister to the final draft contract. Section 9.1.1 of the Policy framework indicates that the Office of the President and Cabinet will ensure timely enactment of legislative instruments as well as ensuring that project concepts and sectoral reform proposals are brought before Cabinet before implementation. Contracting Authorities will be required to submit a PPP concept and project framework paper to Cabinet for approval before implementation. Section 9.1.6 of the Policy framework states that Contracting Authorities will therefore need to ensure that the Utility Regulatory Authorities approve the tariff formula or tariff discovery methodology and mechanism for changing service standards before commitments are made with the private party.
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to section 6.1 of the Policy framework, in order to support the objectives of the Millennium Development Goals and to enhance the opportunities for realizing both strategic and operational benefits, the Government has decided to root PPPs in its broader public expenditure reform programmed, as well as in the Public Sector

	Investment Program (PSIP). In so doing, the Government seeks to strengthen macro-economic stability, allocate scarce resources in line with priorities and improve the effectiveness and efficiency of public sector expenditures by linking them to strategic objectives.
<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 other public investment priorities.</b>	No
<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>	Yes
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	No
<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>	Most 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>	Section 7.2.3 of the Policy framework is related to Public Interest and Consumer Rights: Consideration of public interest requires ensuring that procuring the project as a PPP is not contrary to the public interest. Equally, after a decision has been taken to procure infrastructure and services through the PPP model, it is critical to ensure that the procurement process is so structured as to continue to be in the public interest. PPP projects should seek to safeguard user's interest, particularly vulnerable groups.

<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate.</b>	n/a
<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 Section 26 2. of the PPP Bill, the feasibility study should (c) demonstrate that the agreement shall: (i) be affordable to the contracting authority. Section 7.2.4 of the Policy framework also indicates that affordability will need to be the cornerstone of all PPP projects.
<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate</b>	n/a
<b>Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	According to section 26 2. of the PPP Bill, the feasibility study should (c) demonstrate that the agreement shall: (iii) transfer appropriate technical, operational or financial risk to the private party.  Regarding Risk Allocation, the principle governing the risk transfer is one of optimal allocation. An efficient risk allocation is vital in determining whether VfM can be achieved in PPP projects. Risks will be allocated to whoever is best able to manage them, taking into account public interest consideration. The allocation of risks will therefore determine the chosen method of private sector involvement and allocation of responsibilities. (Policy framework, section 7.2.2)
<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate</b>	n/a
<b>Financial viability or bankability assessment.</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Section 10.2 of the Policy framework identifies as the 2nd step an Initial Viability Analysis and Pre-feasibility, and the 3rd step is the Feasibility Studies: the Government will assess whether the proposed project is robust and meets GoM criteria for risk, viability, bankability, affordability and value for money. This includes estimates of viability gap and the need for incentives. Clearance and approval shall be sought from MOF (Monitoring and Evaluation Unit) before proceeding to the next step of the process. The CA may be able to tap into the IPF to carry out the feasibility study and related studies.
<b>Is there a specific methodology?</b>	Yes
<b>If yes, elaborate</b>	Section 10.2 of the Policy framework identifies as the 2nd step an Initial Viability Analysis and Pre-feasibility Study including possible location(s), alignment(s) and estimates of broad project costs and an initial indication whether the project is likely to be viable and affordable. The PPPC will provide advisory support services to CAs, while the MoF Monitoring and Evaluation Unit will review and provide comments, but not a formal approval at this stage. The PPPC in association with the Monitoring and Evaluation shall provide the requirements for the pre-feasibility study and determine if a full feasibility study is required.

<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>	<p>Pursuant to Section 26 2. of the PPP Bill, the feasibility study should (c) demonstrate that the agreement shall: (ii) provide value for money</p> <p>Moreover, achieving Value for Money (VfM) criteria on PPP projects is paramount. As such achieving the best VfM outcome should be the key consideration at all stages of the project cycle. PPPs should give greater Value for money than the best realistic public sector project designed to achieve similar service outputs. (Policy framework, section 7.2.1).</p> <p>According to section 10.2 of the policy framework, MCAs with the assistance of the PPPC shall conduct Needs and Options Analysis to determine the best solution to provide the service / build infrastructure i.e. traditional public procurement or PPP route.</p>
<b>Is there a specific methodology?</b>	Yes
<b>If yes, elaborate</b>	<p>According to section 7.2.1 of the Policy framework, VfM is a combination of service outcome to be delivered by the private sector, together with the degree of risk transfer and financial commitments for government. Quantitative factors may be tested by comparing the outputs and costs of the PPP proposal against a neutral benchmark called Public Sector Comparator (PSC), which is adjusted for risk (where the risk can be reliably quantified). Achieving VfM is a key requirement of Government at all stages of a project's development and procurement. VfM is the driver for adopting the PPP approach, rather than capital scarcity or balance sheet treatment.</p>
<b>Market assessment (showing evidence of enough interest in the market for the project)</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>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:</b>	All of the projects
<b>Does the procuring authority include a draft PPP contract in the request for proposals?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate (provide examples):</b>	No provision explicitly requires a draft PPP to be included in the request for proposals
<b>Have standardized PPP model contracts and/or transaction documents been developed?</b>	Yes

<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	Practice
<b>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.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Urban and zoning permits.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Other permits.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<b>If no, please elaborate (provide explanation):</b>	n/a
<b>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</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<b>If no, please elaborate (provide explanation):</b>	n/a
<b>Does the regulatory framework establish any exceptions where the preparation process described above does not apply or allows for a “fast track” procedure?</b>	No
<b>If yes, please provide the</b>	n/a

relevant legal/regulatory provisions:	
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:	90
Obtaining the required approvals from other relevant authorities:	37.5
Preparing the draft PPP contract:	30
Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:	157.5
<b>PPP Procurement</b>	<b>Score: 35</b>
Are the bid evaluation committee members required to meet specific qualifications?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	n/a
If no, please elaborate (provide examples):	The PPP Act only specifies that Bids shall be evaluated by the Commission (Section 28).
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.	n/a
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.	n/a
The regulatory framework does not include any provisions.	n/a
Other	n/a

<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>	<p>Under section 27(2) of the Public Private Partnership Bill the invitation for bidders to submit bid shall be done through the request for proposal document, which shall be prepared by the Commission and shall include a public invitation for bidders to submit bids.</p> <p>Under Section 31 of the Public Procurement Act, an invitation to tender, or an invitation to pre-qualify, shall be published in the local press and Government Gazette and, in the case of international tendering, shall also be published in internationally recognized papers in the English language, and in other media of wide international circulation, including the internet. in addition, the invitation shall be displayed in the head office of the procuring entity in a publicly accessible place.</p> <p>Section 59 of PPR provides details.</p>
<b>If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	www.pppc.mw
<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>	Practice
<b>and the time in calendar days :</b>	n/a
<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>	Section 27 (1) of the PPP Bill, the Commission shall consider carrying out a pre-qualification exercise to select potential bidders or may delegate its powers under this subsection to the Contracting Authority where the Commission considers that the Contracting Authority has the necessary expertise to undertake the pre-qualification exercise.
<b>If yes, do the tender documents specify the</b>	Yes

<b>prequalification criteria in order to make them available to all of the bidders?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<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>	Practice
<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>	Practice
<b>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:</b>	All of the projects
<b>Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?</b>	n/a
<b>If yes, please provide the</b>	n/a

<b>relevant legal/regulatory provisions (if any):</b>	
<b>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:</b>	n/a
<b>Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate (provide examples):</b>	Although the public official said yes, no provision requires a financial model to be presented by the bidders. Our best contributor confirmed that there is no practice either.
<b>Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 28 (1) of the PPP Bill, the request for proposals shall clearly set out the evaluation criteria, which shall form the basis for selection of a preferred bidder.
<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>	All 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>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If yes, what of the following options best describes the way the procuring authority deals with sole proposals? (Please select only one). The</b>	n/a

regulatory framework details a specific procedure that the procuring authority must follow before awarding a PPP contract where only one proposal is submitted.	
Please specify:	n/a
The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	n/a
The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.	n/a
The regulatory framework does not include any provisions.	n/a
Other	n/a
please specify:	n/a
In practice, what is the average number of calendar days between the initial publication of the PPP public procurement notice and the award of the PPP? Number of calendar days:	270
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):	Practice
If yes, is the public procurement award notice published online?	No
If yes, please specify the website:	<a href="#">n/a</a>
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):	Practice
If no, please elaborate (provide examples):	n/a
If yes, does the notification of the result of the PPP	Yes

<b>procurement process include the grounds for the selection of the winning bid?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Among the PPP procurement processes conducted within the last two (2) years, in how many of them were the terms and conditions changed between the award and the signature of the PPP contract? Please elaborate:</b>	Some of the projects
<b>Does the procuring authority publish the PPP contract?</b>	No
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If yes, is it published online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a “fast track” procedure?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Unsolicited proposals</b>	Score: 33
<b>Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	According to Section 31 (1) of the PPP Bill, any unsolicited bid or expression of interest for a Public Private Partnership by a prospective private partner to a Contracting

	<p>Authority must be referred to the Commission and must not be responded to by the Contracting Authority.</p> <p>Section 7.3 of the Policy framework is related to Unsolicited Proposals: All unsolicited bids shall be referred to the PPP Commission who will advise the bidder to wait for a competitive tender process.</p>
<p><b>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:</b></p>	No data
<p><b>Does the procuring authority conduct an assessment to evaluate unsolicited proposals?</b></p>	Yes
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>According to Section 31 of the PPP Bill (2) Once the Commission receives the unsolicited bid or expression of interest it shall consult with the relevant Contracting Authority for a preliminary assessment whether the Public Private Partnership of the type proposed is acceptable or not.</p> <p>(3) If the assessment and consultation in subsection (2) determines that the Public Private Partnership type is acceptable the Commission shall seek the approval of the Cabinet for approval to conduct a feasibility study and the unsolicited bidder shall be informed that bidders including him shall be invited to bid for the Public Private Partnership in accordance with the procedure laid down in this Act.</p> <p>(4) If however the assessment and consultation in subsection (2) above determines that the Public Private Partnership being proposed is unacceptable the Commission shall advise the unsolicited bidder accordingly.</p>
<p><b>If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?</b></p>	No
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	n/a
<p><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></p>	n/a
<p><b>If yes, please specify:</b></p>	n/a
<p><b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without</b></p>	n/a

<b>establishing specific procedures to achieve that goal.</b>	
<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>	No data
<b>Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Section 31. 3 of the PPP Bill, If the assessment and consultation in subsection (2) determines that the Public Private Partnership type is acceptable the Commission shall seek the approval of the Cabinet for approval to conduct a feasibility study and the unsolicited bidder shall be informed that bidders including him shall be invited to bid for the Public Private Partnership in accordance with the procedure laid down in this Act.
<b>Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	No
<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
<b>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.</b>	No
<b>Developer's fee (reimbursing the original proponent for the project development cost).</b>	No
<b>Bid bonus.</b>	No
<b>Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and</b>	No

<b>win the contract).</b>	
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>PPP Contract Management</b>	<b>Score: 26</b>
<b>Has the procuring or contract management authority established a system to manage the implementation of the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any)</b>	<p>Section 9.1.4 of the Policy framework indicates the missions of the Ministry of Finance (PPP Monitoring and Evaluation Unit): The Unit will carry the mandate of the PPP Monitoring and Evaluation function and for the most part this is to ensure coordination of the review and screening of PPP projects in the interest of protecting the public interest. The review function, above all, assesses the relevant financial risks exposure to government, which may be associated with the project. The Monitoring and Evaluation Unit carries out a review at different stages of the project cycle of all projects submitted by MCAs and which would have been developed with the support of the PPPC. On the basis of this assessment the Ministry of Finance shall approve (or reject) specific aspects of PPP project in order to ensure fiscal sustainability, financial and economic viability and robustness of contracts over the long term. Some of the review functions are not new as these are already being carried out by MoF departments or other MCAs. The purpose of creating the PPP Monitoring and Evaluation Unit in the Ministry of Finance is to have a one-stop office that will systematize and coordinate the different inputs needed. With respect to reviews, which are not currently being undertaken by any part of the Government, the PPP Monitoring and Evaluation Unit would be required to develop these skills within the MoF. The PPPC will work with MoF in ensuring that PPP functions within the ambit of the Public Finance Management Act as well as ensuring that there is coordination in developing the necessary review guidelines. MOF will ensure fiscal sustainability for PPP projects, considering both direct and contingent liabilities on government's finances including guarantees, arising from each PPP project. Specifically, MOF will be responsible for the following:</p> <ul style="list-style-type: none"> <li>- Fiscal impact: assessing the long-term fiscal impact of the PPP project (direct or contingent, explicit or implicit) and determining whether it is acceptable, given other national priorities;</li> <li>- Government support: confirming the appropriateness of the project for sovereign guarantees (debt or specific-event) or other kinds of government support.</li> <li>- Will establish processes to incorporate PPP project development into the annual budgeting exercise, and fund direct as well as contingent (unanticipated) calls on the budget. MoF shall therefore ensure that any payments to be made by MCAs under the PPP contract are consistent with the national budget.</li> </ul> <p>Contract Management is identified as the 5th step by section 10.2 of the Policy framework : CAs and Regulatory Authorities (RAs) have responsibility of ensuring contract compliance, contract enforcement and contract adjustment/re-negotiation. The CAs as the landlord and signatory to the concession contract will ensure that the</p>

	<p>performance standards laid down in the agreement are met by the private party. The RAs will ensure that the tariffs and technical quality/service delivery standards are in compliance with the PPP agreement (discretionary changes will not be permitted). The PPP agreement is a commercial contract and normally requires consent on the part of the two parties in respect of any changes. Where the RA is required to issue a separate license for the PPP agreement there will be the need to ensure that there is consistency between the two instruments. The PPC will coordinate the recruitment of owners engineering representative where necessary to ensure that the construction contractor delivers the project according to the standards laid down in the agreement and from time to time will carry out audits of the process.</p>
<p>If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Participation of the members of the PPP contract management team in the PPP procurement process.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Possibility to consult with PPP procurement experts when managing the PPP contract.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Elaboration of a PPP implementation manual or an equivalent document.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Other</p>	No
<p>please specify:</p>	n/a
<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>	No Data
<p>Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP</p>	Yes

<b>contract?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>The 6th Step identified by section 10.2 of the Policy framework is Implementation and Appraisal: The CAs supported by the PPPC will carry out an appraisal of the entire PPP project from project identification to Implementation in order to assess the efficiency and effectiveness of project implementation. The purpose of such a review and appraisal is to draw important lessons that can be applied in future projects and to assist in the policymaking effort.</p> <p>A comprehensive and regular review of the overall process shall be a core responsibility of the structures managing the development and implementation of PPPs. Reviews shall be prepared openly and transparently within an appropriate time frame. The review shall specify implications for the procurement of infrastructure and the delivery of quality services helping to shape the future of the PPP program. The implementation of, and adherence to, the policy framework will focus, in particular, on the consistency of conduct of the PPP process with the policy and the need for any revisions required to maintain its consistency with ongoing developments and expansion of Malawi's PPP program.</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>	Practice
<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>	<p>The 6th Step identified by section 10.2 of the Policy framework is Implementation and Appraisal: The CAs supported by the PPPC will carry out an appraisal of the entire PPP project from project identification to Implementation in order to assess the efficiency and effectiveness of project implementation. The purpose of such a review and appraisal is to draw important lessons that can be applied in future projects and to assist in the policymaking effort.</p>
<b>The procuring or contract management authority must establish a risk mitigation mechanism.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The PPP contract performance information must be available to the public.</b>	No
<b>If yes, please provide the relevant legal/regulatory</b>	n/a

<b>provisions (if any):</b>	
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<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>	n/a
<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 same technical qualifications as the original operator.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Flexibility to substitute non-controlling interest after the initial period.</b>	n/a
<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>	No
<b>If yes, please provide the relevant legal/ regulatory provisions:</b>	n/a
<b>If yes, which of the following circumstances are specifically</b>	n/a

<b>regulated? (check all that apply): A change in the scope and/or object of the contract.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>A change in the risk allocation of the contract.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>A change in the investment plan or duration of the contract.</b>	n/a
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Material Adverse government action.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Change in the Law.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Refinancing.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Policy framework included in the PPP Unit's missions: Contract management/re-negotiation: assisting in on-going contract oversight, especially over the construction phase and assisting in contract re-negotiations that might occur over the life of the project, including re-financing.
<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>	Pursuant to Section 22 (4) of the PPP Bill, every agreement shall provide for disputes between the Partner and the Contracting Authority to be settled by arbitration, according to the rules defined in the agreement.

	Section 65 (1) further indicates that any dispute between – (b) an investor, a partner, a Government Authority and the Commission arising from or relating to a public-private partnership arrangement, shall be settled through negotiation, mediation, or, by arbitration in accordance with the Arbitration Act.
<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 disputes arising during the implementation of the PPP.</b>	No
<b>If yes, please specify:</b>	n/a
<b>The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.</b>	Yes
<b>The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>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?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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.</b>	n/a
<b>If yes, please specify:</b>	n/a
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	n/a
<b>The regulatory framework prescribes that a direct</b>	n/a

<b>agreement should be signed with the lenders.</b>	
<b>Other</b>	n/a
<b>please specify:</b>	n/a
<b>Does the regulatory framework expressly establish the grounds for termination of a PPP contract?</b>	No
<b>If yes, please specify:</b>	n/a
<b>and provide the relevant legal/regulatory provisions:</b>	n/a
<b>If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<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>	No
<b>Please describe:</b>	n/a
<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>	Yes
<b>Please describe:</b>	There are plans to repeal the Public Enterprises (Privatization) Regulations with regulations tailor-made to support the PPP Act. The Public Enterprises (Privatization) Regulations were developed under the repealed Public Enterprises (Privatization) Act.