

BENCHMARKING PPP PROCUREMENT 2017 IN NIGERIA

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>Nigeria operates a federal system of government, thus, both federal and state laws impact and apply to PPP projects. At the federal level, the relevant laws, regulations and policies are as follows:</p> <p>(1) Public Procurement Act 2007 (the "Public Procurement Act" (PPA)) (2) Public Procurement (Goods and Works) Regulations 2007 and Public Procurement (Consultancy Services) Regulations 2007 (the "Procurement Regulations"); (3) Public Procurement Procedure Manual 2011 (the "Procurement Manual"); (issued by the Bureau of Public Procurement, January 2011) (4) Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act 2005 (the "ICRC Act"); (5) Public Private Partnership Manual of the Infrastructure Concession Regulatory Commission 2012 (the "PPP Manual"); (6) the National Policy on Public Private Partnership 2008 (the "PPP Policy"); (7) the Unsolicited Proposals Guidelines issued by the ICRC; and the Guidance on Contract Disclosure issued by the ICRC (the latter guidelines are still in draft version) (8) the Public Enterprises (Privatization and Commercialization) Act 1998. (9) The National Policy issued by the ICRC in July 2009 (it is not binding as it has no force of law. It merely constitutes a guide put together to provide clear and consistent process and procedures for all aspects of PPP project development, operation, maintenance and performance monitoring).</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>Infrastructure Concession Regulatory Commission (ICRC Act): http://ppptoolkit.icrc.gov.ng/ Bureau of Public Procurement: http://www.bpp.gov.ng/index.php?option=com_joomdoc&view=documents&path=Public_Procurement_Act_2007.pdf&Itemid=614 Nigerian Investment Commission: http://nipc.gov.ng/ Bureau of Public Enterprises: http://www.bpeng.org/sites/bpe/Pages/home.aspx</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.	No
If yes, please provide the relevant	n/a

legal/regulatory provisions:	
Water and irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Energy generation and distribution	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Health	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Education	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Other	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):	<p>In Nigeria, all Federal Government Ministries, Departments, and Agencies (MDAs) as well as respective States Governments can procure PPP projects (with support of the Public Investment Division and Project Management Unit of the Ministry of Finance and Economic Planning (www.mofep.gov.ng)). Some of the important PPP procuring authorities include:</p> <ol style="list-style-type: none"> 1. The Bureau of Public Enterprise (http://www.bpeng.org); 2. The Bureau of Public Procurement (http://www.bpp.gov.ng); 3. The Federal Ministry of Finance (www.finance.gov.ng); 4. Federal Ministry of Works (www.works.gov.ng); 5. Federal Ministry of Power; 6. Federal Ministry of Transport; 7. Federal Ministry of Agriculture and Rural Development; 8. Federal Capital Territory Administration; 9. Federal Capital Development Agency Nigeria (www.fcda.gov.ng); 10. Federal Ministry of Women Affairs; 11. Federal Ministry of Lands, Housing and Urban Development

	<p>(www.landsandhousing.gov.ng);</p> <p>12. Federal Ministry of Interior (www.interior.gov.ng);</p> <p>13. Nigerian Port Authority (NPA) www.nigerianports.org;</p> <p>14. Federal Airports Authority of Nigeria (FAAN) (www.faannigeria.org)</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):	At the national level, the "Infrastructure Concession Regulatory Commission" (ICRC - website: www.icrc.gov.ng) is responsible for formulation of PPP policies, regulating PPPs and is a gatekeeping/approving authority for PPP procurements. It also issues guidelines on PPP policies, processes and procedures (including those for concessions), and acts as a national center of expertise in PPP (including the PPP Resource Centre with the PPP Toolkit), promotion and procurement. It includes the PPP Resource Centre (http://ppptoolkit.icrc.gov.ng/the-enabling-environment-for-ppps/the-nigerian-federal-institutional-framework), and finally the Bureau of Public Procurement is responsible for (i) Development of optimal means of financing PPPs and (ii) Custody of and monitoring performance of concession agreements (http://www.bpp.gov.ng/)
If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.	Yes
PPP policy guidance and capacity building for other public authorities.	Yes
PPP promotion among the public and/or private sectors in national and international forums.	Yes
Technical support in implementing PPP projects.	Yes
Gatekeeping (approval of PPP projects).	No
Procurement of PPPs.	No
Oversight of PPP implementation.	Yes
Other	No

please specify:	n/a
Preparation of PPPs	Score: 46
Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 6 of the PPP Policy "The Ministry of Finance will have an important role in public financial management of PPP projects, and in evaluating and managing fiscal risks that may result from the terms of the agreements. The Ministry will need to ensure that the forecast costs for the Government—including any subsidies that may be required to make a project financially viable or to ease the transition for poor households to a full cost recovery tariff—are affordable over the life of the contract and within the Medium Term Expenditure Framework. Costs and contingent liabilities will need to be reviewed as the project design and risk valuations are refined during the project preparation and procurement phases, and any significant changes to the initial estimates notified to the Ministry. Together with the Ministry of Finance, the Debt Management Office (DMO) will need to be satisfied that any contingent liabilities are manageable within the Government’s economic and fiscal forecasts. The DMO will need to be consulted in advance by project teams within an MDA which is considering the involvement of multilateral agencies such as IFC, MIGA or IDA in providing guarantees or other financial instruments”.</p> <p>Therefore, the relevant MDA will be required to submit its budget for any PPP project to the Ministry fo Finance and the Debt Management Office for review and appraisal. The Budget will only be approved by the Federal Executive Council (FEC) after the MDA has considered any advice or revisions made to the budget by the Ministry of Finance and Debt Management Office.</p> <p>The relevant Ministry; Department or Agency involved in the proposed PPP should consult and engage with the Federal Ministry of Finance (FMOF) prior to commencing PPP projects, in order to minimize the risk and contingent liabilities arising from such projects. The (FMOF) will need to ensure that the forecast costs for the Government—including any subsidies that may be required to make a project financially viable or to ease the transition for poor households to a full cost recovery tariff—are affordable over the life of the contract and within the Medium Term Expenditure Framework. Costs and contingent liabilities will need to be reviewed as the project design and risk valuations are refined during the project preparation and procurement phases. Also the FMOF is also notified of any significant changes to the initial estimates on the project. Essentially, the FMOF is consulted all through the life span of the PPP.</p>
If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before	No

signing the PPP contract?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process?	Yes
If yes, please specify the relevant authority	<p>(1) The authority that approves preparation of PPP projects is the relevant Ministry, Department, Agency or Government Owned Enterprise seeking to concession an infrastructure project would first categorize it as a 'priority project'. At the state level: Office of Public-Private Partnership (OPPP)</p> <p>(2) The Authority that approves procurement of PPP: The Federal Executive Council approves PPP projects before procurement. Section 6 of the National Policy on PPP requires the ICRC to provide opinion to FEC on whether projects submitted for FEC approval meet the requirements of the regulations (Note: last year: Our best contributor confirmed that the ICRC does not approve PPP. Projects are submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency (i.e Procuring Entities). The ICRC gives support and recommendation to the Federal Executive Council on the projects to be procured as PPP), and finally,</p> <p>(3) (i) The Bureau of Public Procurement and (ii) The respective Tenders Boards of the various ministries, extra-ministerial bodies, government agencies, parastatals or corporations.</p>
and provide the relevant legal/regulatory provisions (if any):	<p>(1) Section 2 (1) of the ICRC Act establish "Every Federal Government Ministry, Agency, Corporation or body shall prioritize its infrastructure projects and such priority projects may be qualified for concession under this Act"</p> <p>(2) Section 2(2) of the ICRC Act that states "The projects mentioned in Subsection (1) of this section shall be submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency prior to entering into any contract under Section 1 of this Act", and finally, (3) Section 16(1) of the PPA provides that no public procurement shall be conducted by a procuring entity until it has obtained a certificate of No Objection to Contract Award from the BPP. Section 17 of the PPA provides that the Ministerial Tenders Board and the Parastatal Tenders Board shall approve the conduct of any public procurement. Section 19 of the same Act provides that a procuring entity shall in implementing its procurement plans, obtain approval of the approval authority (either the Ministerial Tenders Board or the Parastatal Tenders Board (whichever is applicable)) prior to making an award.</p>

<p>If yes, is a second approval by the same authority required before signing the PPP contract?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>A second approval of the priority project for concessioning from The Federal Executive Council is required in order to enter into a PPP contract. In fact, Section 2(2) of the ICRC Act that states "The projects mentioned in Subsection (1) of this section shall be submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency prior to entering into any contract under Section 1 of this Act"</p>
<p>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)?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 2(1) of the ICRC Act provides that every Federal Government Ministry, Agency, Corporation or body shall prioritize its infrastructure projects and such priority projects may be qualified for concession. To this extent, there appears to be some integration of the prioritization of PPP projects and public investment projects.</p>
<p>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.</p>	<p>No</p>
<p>If yes, please specify:</p>	<p>n/a</p>

<p>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.</p>	<p>No</p>
<p>The regulatory framework does not include any provisions.</p>	<p>No</p>
<p>Other</p>	<p>Yes</p>
<p>please specify:</p>	<p>Section 2(1) of the ICRC Act provides that every Federal Government Ministry, Agency, Corporation or body shall prioritize its infrastructure projects and such priority projects may be qualified for concession. To this extent, there appears to be some integration of the prioritization of PPP projects and public investment projects.</p>
<p>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:</p>	<p>All of the projects</p>
<p>Which of the following assessments are conducted when identifying and preparing a PPP? (check all that apply): 10.1. Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the project)</p>	<p>Yes</p>
<p>Relevant legal/regulatory provision (if any)</p>	<p>According to Section 9 of the PPP Policy Project Development of the PPP process will include the "(...) preparation of economic, social and environmental cost benefit analysis (...)".</p>
<p>Is there a specific methodology?</p>	<p>No</p>
<p>If yes, elaborate.</p>	<p>n/a</p>
<p>Affordability assessment,</p>	<p>Yes</p>

including the identification of the required long term public commitments (explicit and implicit)	
Relevant legal/regulatory provision (if any)	According to Section 9 of the PPP Policy Project Development of the PPP process will include the "budget allocation within the National Development Plan and, subsequently, the Medium Term Expenditure Framework (MTEF)". This aspect is further discussed in paragraph 2.2 regarding specifically affordability of the PPP Policy (Part 2 - Value for Money). Furthermore, Section 16(1)(b) of the PPA provides that no procurement proceedings shall be formalized until the procuring entity has, among other matters, ensured that funds are available to meet the obligations.
Is there a specific methodology?	No
If yes, elaborate	n/a
Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Part 3 of the PPP Policy contains a Supplementary Note on Project Risk and PPP with the Federal Government with paragraph 3.1 expressly stating "The preparation of a PPP project—and the business cases that support the procurement or investment decisions—require that project risks are identified and quantified wherever possible. The process needs to be systematic and recorded, and will often involve technical advisers". Additionally, Paragraph 4 of the ICRC PPP Process issued 17 February, 2014 requires the preparation of a Business Case prior to the procurement process (which, according to our best contributor, would certainly contain a risk matrix).
Is there a specific methodology?	No
If yes, elaborate	n/a
Financial viability or bankability assessment.	Yes
Relevant legal/regulatory provision (if any)	Paragraph 4 of the ICRC PPP Process issued 17 February, 2014 provides that a PPP over Federal Government Infrastructure would typically follow the steps below: A Transaction Adviser (TA) would be engaged by the MDA through competitive bidding process as required under the Public Procurement Act of 2007, to produce the report that would show the bankability of the project. This report is called an Outline Business Case (OBC) (A document prepared by the MDA's TA that aims to establish the need for the project and its outline parameters and scope, including costs and bankability demonstration).
Is there a specific methodology?	No
If yes, elaborate	n/a
Comparative assessment to evaluate whether a PPP is the best	Yes

option when compared to other procurement alternatives	
Relevant legal/regulatory provision (if any)	According to Section 9 of the PPP Policy Project Development of the PPP process will include the "value for money (Value for Money) and affordability testing of different procurement options". Part 2 of the PPP Policy contains a Supplementary Note specifically on Value for Money where this provisions are detailed.
Is there a specific methodology?	No
If yes, elaborate	n/a
Market assessment (showing evidence of enough interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	Section 18(c) of the Public Procurement Act requires the procuring entity to, in planning its procurement, carry out appropriate market and statistical surveys to inform preparation of analysis of cost implications of the proposed procurement. Also, according to Section 9 of the PPP Policy Procurement of the PPP process may include "market consultation, if appropriate".
Is there a specific methodology?	No
If yes, elaborate	n/a
Among the PPP projects procured within the last two (2) years, for how many of them were all of the required assessments conducted? Please elaborate:	All of the projects
Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide examples):	n/a
Have standardized PPP model contracts and/or transaction documents been developed?	No

<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>n/a</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>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>Urban and zoning permits.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>Other permits.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<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>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>If no, please elaborate (provide explanation):</p>	<p>Section 13 of the ICRC Act provides that every contractor to whom a concession has been granted shall have a right of way or easement in respect of any land or property near to or bordering the project site or facility. However, the referenced section relates to right of easement as opposed to ownership of actual project site (land).</p>

	<p>Ownership of interests in land in Nigeria is governed by the Land Use Act. Thus, whilst extant law imposes a duty on procuring authorities to grant necessary rights (such as right of way/right of easement), but there is no corresponding duty on procuring entities to provide land (project site in this instance) to the PPPCO. However, depending on the structure of the project, the procuring entities contribution to the project may be land and in other instances, the PPPCo would be the entity responsible for procuring the project site.</p>
<p>Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Right of way</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 13 of the ICRC Act 2008 provides that: "Every contractor to whom any concession has been granted under this Act shall have a right of way or easement in respect of any land or property near to or bordering the project site or facility as may be reasonably necessary for the proper implementation of the project under this Act."</p>
<p>If no, please elaborate (provide explanation):</p>	<p>n/a</p>
<p>Does the regulatory framework establish any exceptions where the preparation process described above does not apply or allows for a "fast track" procedure?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>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:</p>	<p>217</p>
<p>Obtaining the required approvals from other relevant authorities:</p>	<p>98</p>

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:	122
PPP Procurement	Score: 75
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)	Section 22 of the Public Procurement Act 2007 establishes the Tender's Board, which creates a technical evaluation sub-committee charged with the responsibility of bid evaluation. Additionally, Clause 3.2 of Part 1 of the PPP Policy states that the evaluation committee should include suitably qualified individuals and at least one person experienced in public procurement.
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	Yes

evaluation committee.	
The regulatory framework does not include any provisions.	No
Other	No
please specify:	n/a
Does the procuring authority issue a public procurement notice of the PPP?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Section 4 of the ICRC Act provides that upon approval of a project or contract, the Federal Government Ministry, Agency, Corporation or body concerned shall publish in at least three national newspapers and such other means of circulation, an invitation for open competitive public bid for such project or contract. Paragraphs 36.1 and 37.1 of the Procurement Procedures Manual provide for procurement notices (General and Special Procurement Notice) to be issued by the procurement entity. Furthermore, Paragraphs 7.1 and 7.2 of the Procurement Procedures Manual also provide for the publication of the procurement notices and solicitations on a public notice board and on the internet website (if any) of the procuring entity. Also, Section 25 (2) of the Public Procurement Act provides that "Every invitation to an open competitive bid shall : (i) in the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognized publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.
If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	www.bpp.gov.ng
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):	Section 25 (2) of the Public Procurement Act provides for publication "not less than six weeks before the deadline for submission of the bids for the goods and works".
and the time in calendar days :	42
Do the tender documents detail the stages of the procurement process?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide examples):	n/a
Does the procurement process include a pre-qualification stage to select a number of qualified bidders to present the full proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 44(a) of the Public Procurement Act 2007 provides that the procuring entity shall solicit for Expressions of Interest (EOI) or applications to prequalify to provide the services required, and Section 23 of the same Act sets out the processes and procedure involved in the pre-qualification process.</p> <p>(Note: ICRC National Policy on Public Private Partnerships 2008, provides for a prequalification process. Part 1, page 24 provides as follows; "The notice will invite bidders to submit Expressions of Interest for inclusion on a short list of private parties invited to bid for the project. The notice should provide sufficient information to help firms decide whether to attempt to prequalify for the tender list, including a description of the scope of the project, its approximate value, contact details for further information (usually the Information Memorandum and Prequalification Document) and the deadline for application.")</p>
If yes, do the tender documents specify the prequalification criteria in order to make them available to all of the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 23 (1) of the PPA which provides that the procuring entity shall set out the precise criteria upon which it seeks to give consideration to the applications; and Sections 44 and 45 of the Public Procurement (Goods and Works) Regulations 2007 which provide that the invitation for pre-qualification shall contain a summary of the criteria and procedures for evaluation.</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	All of the projects

tender documents? Please elaborate	
Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 23(4) of the Public Procurement Act of 2007 provides that "The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to prequalify".
If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 23(6) of the PPA requires that "The response to any request that might reasonably be expected to be of interest to any other supplier, contractor or consultant shall, without identifying the source of the request, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity".
Among the PPP procurement processes conducted within the last two (2) years where questions were submitted, in how many were the questions and clarifications disclosed to all of the potential bidders? Please elaborate:	All of the projects
Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?	Yes
If yes, please specify and provide the relevant	Section 39(5) of Public Procurement Act allows the procuring entity, at the first stage, to engage in negotiations with the bidders with respect to aspects of their tenders. It provides that "the procuring entity may, in the first stage, engage in negotiations with

legal/regulatory provisions (if any):	any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender".
If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Among the PPP procurement processes conducted within the last two (2) years where any other type of dialogue was conducted, in how many was the content and the result of the dialogue disclosed to all of the potential bidders? Please elaborate:	All of the projects
Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Paragraph 4.3 of Part 1 of the PPP Policy "All of the pricing information, including financing costs, will be included in a financial model which will be submitted as part of the bid. This will be used to calculate the annual payment that the Authority will make (or, in the case of a concession, the tariffs to be paid by the user and/or the payments to be made to the Authority from the net project revenues) for the services provided".
If no, please elaborate (provide examples):	n/a
Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria	Yes

stated in the tender documents?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 32(1) of the Public Procurement Act provides that "For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents". Section 3.2 of Part 1 of the PPP Policy on states that "(...) The evaluation of Expressions of Interest needs to be rigorous and use only the published evaluation criteria (...)"</p>
Among the PPP procurement processes conducted within the last two (2) years, in how many of them was the evaluation of the bidders conducted in accordance with the criteria stated in the tender documents? Please elaborate:	<p>All of the projects</p>
In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 5 of the ICRC Act allows the relevant MDA to undertake direct negotiation, in the event that only one contractor or project proponent submits a bid. Sections 87 of the Procurement Regulations (procurement of consultant services) provides that where one proposal is received, the procuring entity may evaluate the proposal and if satisfactory, invite for contract negotiations or continue with the one remaining candidate to negotiations and contract award. Section 111 of the Procurement Regulation (procurement of goods and works) provides that such bid be technically and financially responsive compared to market prices and otherwise in order before it can be accepted and following evaluation, be awarded to the sole bidder. (Section 5 of the ICRC Act and Section 111 of the Procurement Regulation (goods and works).</p>
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	<p>Yes</p>

authority must follow before awarding a PPP contract where only one proposal is submitted.	
Please specify:	The procuring entity is required to enter into direct negotiations with the bidder and include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances justifying the single source procurement.
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:	660
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):	Section 19(1)(j) of Public Procurement Act mandates to "Announce and publicize the award in the format stipulated by this Act and guidelines as may be issued by the Bureau from time to time". In this sense, Paragraph 64 of the Procurement Procedures Manual provides that the award of all contracts the award of all contracts should be notified to the Bureau of Public Procurement and published in two national dailies.
If yes, is the public procurement award	Yes

notice published online?	
If yes, please specify the website:	www.bpp.gov.ng/
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):	Section 56 of the PPM requires that the procuring entity notify all bidders the result of the procurement process.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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	None of the projects

and the signature of the PPP contract? Please elaborate:	
Does the procuring authority publish the PPP contract?	No
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	n/a
If yes, is it published online?	n/a
If yes, please specify the website:	n/a
Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a "fast track" procedure?	Yes
If yes, please provide the relevant legal/regulatory provisions:	Sections 39 to 43 provide for special or restricted methods of procurement. Section 39 permits a procuring entity to engage in procurement by a two-stage tendering under certain circumstances, Section 40(1) of the PPA provides that a procuring entity may for reasons of economy and efficiency engage in restricted tendering process, subject to the approval of the BPP. Sections 42 and 43 of the PPA also allow a procuring entity to carry out an emergency procurement, without observing the procurement process. Section 5 of the ICRC Act allows a procuring entity to undertake direct negotiations without competitive bidding where only one contractor or project proponent submits a bid or where only one contractor or project proponent meets the pre-qualification requirements.
Unsolicited proposals	Score: 83
Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)	Yes
If yes, please provide the relevant legal/regulatory provisions:	The Infrastructure Concession Regulatory Commission Guidelines for Implementing Unsolicited Proposals for PPPs in Nigeria (the "ICRC Guidelines"): (http://ppptoolkit.icrc.gov.ng/wp-content/uploads/2012/09/Guide-for-Implementing-Unsolicited-Proposals.pdf): Clause 3.2 indicates a specific procedure to evaluate unsolicited proposals and states as the first condition for an unsolicited proposal to be implemented that "(a) The project serves a credible public interest; (b) The project is in line with the national development goals of the relevant MDA."

<p>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:</p>	<p>18%</p>
<p>Does the procuring authority conduct an assessment to evaluate unsolicited proposals?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>Paragraph 3.2 of the Infrastructure Concession Regulatory Commission Guidelines for Implementing Unsolicited Proposals for PPPs in Nigeria.</p>
<p>If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Clause 3.2 of Infrastructure Concession Regulatory Commission Guide for Implementing Unsolicited Proposals for PPPs in Nigeria states as the first condition for an unsolicited proposal to be implemented that "(a) The project serves a credible public interest; (b) The project is in line with the national development goals of the relevant MDA"</p>
<p>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.</p>	<p>Yes</p>

If yes, please specify:	<p>According to Paragraph 3.2 of the Infrastructure Concession Regulatory Commission Guidelines for Implementing Unsolicited Proposals for PPPs in Nigeria, the procedure is as follows:</p> <p>(1) The Unsolicited proposal is submitted to and reviewed by the relevant Ministry, Department or Agency (MDA) with oversight for the relevant sector.</p> <p>(2) The MDA is required to review the proposal to determine that it meets the following criteria: (a) The project serves a credible public interest; (b) The project is in line with the national development goals of the relevant MDA; (c) The project falls within the category of critical infrastructure; (d) The project is viable and does not require viability gap funding; and (e) The project proponent possesses the requisite competence and profile to implement the project.</p> <p>(3) Following the review of the proposal by the MDA, the unsolicited proposal is then forwarded to ICRC for its review and issuance of "No Objection", if the proposal is satisfactory.</p> <p>(4) Technical and financial due diligence will then be carried out to ascertain the capability of the project proponent in implementing the project, if selected.</p> <p>(5) Following the issuance of "No Objection" from ICRC and success of the project proponent from the due diligence exercise, the proposal may then be approved at the ministerial level.</p> <p>(6) The project proponent is then issued a formal acknowledgement as the project author and the project commences to a competitive bidding stage.</p> <p>(7) Following the competitive procurement process (EOI, RFP, etc.) the project proponent is then requested to submit a Best and Final Offer, along with the preferred bidder.</p> <p>(8) The successful bidder is then determined by the most economically and financially viable submission</p>
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	<p>No</p>
The regulatory framework does not include any provisions.	<p>No</p>
Other	<p>No</p>
please specify:	<p>n/a</p>
Among the unsolicited proposals approved within the last two (2) years, how many of them were a part of the existing government	<p>Some of the projects</p>

priorities? Please elaborate:	
Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Paragraph 2.2 of the ICRC Guidelines on Unsolicited Proposals provides that "The overarching principle is that all unsolicited proposals are channeled to a transparent and competitive process where challengers have a free chance of winning the tender. The Swiss Challenge System will be applied to allow submission of competing bids, to all qualifying unsolicited proposals, by other potential proponents, via a transparent process. This system however recognizes the investments made by the Project Proponent (PP) in preparing the proposal to the requisite OBC standard, as such the original proponent is granted the right to counter-match the best offer and secure the contract.</p> <p>Also, Paragraph 3.2 of the ICRC Guidelines on Unsolicited Proposals provides that the project shall commence to a competitive bid stage upon the issuance of a formal acknowledgment of the Project proponent as the Project Author.</p>
Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 48 of the Public Procurement Act provides that the procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than 30 days between the issue of the notice or request and the deadline for submission of proposals.
and the time in calendar days:	30
Does the procuring authority use any of the following mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer.	No
Developer's fee (reimbursing the original proponent	No

for the project development cost).	
Bid bonus.	No
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	Yes
Other	No
please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	Score: 40
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)	Sections 10 and 12 of the Infrastructure Concession Regulatory Commission Act provide that: 10. The Ministry in charge of the project and the ICRC are required to conduct regular joint inspections of the project until the end of the contract; 12. Requires the Federal Government Ministry, Agency, Corporation or body in charge of the project to supervise the project in respect of which the concession has been granted by it.
If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The Nigeria Public Private Partnerships Manual provides that In order to ensure effective management of PPP contracts the public authority will need a dedicated Contract Management Team comprised of experienced personnel. At minimum, a typical Contract Management Team should consist of the following personnel: Project officer, Accounting officer, Technical advisory team. However, since we were unable to access that Manual online, we followed up with our best contributor to confirm the wording of the Manual. However, our best contributor answered that they were also unable to access a copy of the Manual online. However, based on their knowledge of the National Manual and the provisions of the Lagos State Manual (which is materially similar to the National Manual), the establishment of a contract management team is not compulsory. It is recommended

	<p>to procuring agents as best practice. Moreover, the Public Procurement Manual issued by the Bureau of Public Procurement does not provide for the establishment of a contract management team.</p> <p>After following up, one of our best contributors confirmed that The Public Procurement Manual does not directly establish a PPP contract management team. However, there is a framework for contract management under the Public Procurement Manual. The Procurement function or the Technical Department concerned must ensure that routine monitoring of all current contracts is maintained so that prompt remedial or preventive action can be taken when problems arise or are foreseen. Sections 87 and 88 of the Public Procurement Manual.</p> <p>However, our other best contributor explained that the Public Procurement Manual contemplates the management of contract implementation by a Procurement & Stores Department or Technical Department (as appropriate) in the case of goods, and by a Supervising Engineer hired by the procuring entity in the case of services. The Manual does not expressly stipulate the technical experience of such Engineer, or personnel in such Department. From a practical perspective however, the Engineer and Department will be experienced in their respective mandates. The relevant provisions of the Manual are as follows: Paragraph 87.2: Contract supervision and administration for goods will be undertaken by the Procurement & Stores Department or the Technical Department as appropriate. Supervision and administration is straightforward in most contracts for goods. Monitoring delivery schedules, processing of documents and organizing/performing the inspection of goods are essential to ensure that the correct goods are delivered on time. Paragraph 87.3: Contract supervision and administration of works contracts is usually more complex than for goods due to the nature of works, the fact that they are usually implemented in the outside, in remote areas, and that the circumstances (soil, climate) may be different than what was foreseen at the time the detailed design of the works was made. The daily control and supervision of such contract is usually the responsibility of a Supervising Engineer appointed or hired by the Procuring Entity. The Procuring Entity must therefore ensure that it is kept informed of progress and problems which arise through routine reports. The Supervising Engineer is obliged to obtain approval from the Procuring Entity (the Procuring Entity) for major contract management decisions (e.g. issuing variation orders above a specified value, granting extension of time, approving additional payments, issuing taking-over or defect liability certificates). Where necessary, it is advisable for the procuring entity to establish a multi discipline monitoring and evaluation team for periodic field inspection and monitoring of projects.</p>
Participation of the members of the PPP contract management team in the PPP procurement process.	No
If yes, please provide the relevant	n/a

legal/regulatory provisions (if any):	
Possibility to consult with PPP procurement experts when managing the PPP contract.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other	No
please specify:	n/a
If there is a contract management team, in how 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:	All of the projects
Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	(1) Section 12 of the ICRC Act provides that the relevant procuring entity shall supervise the project in respect of which a concession has been granted by it. (2) Also, paragraph 88.1 of the Procurement Procedure Manual provides that the supplier, contractor, service provider or consultant's performance against the contract must be monitored on a routine basis. Furthermore, (3) Section 7.2 of the Nigeria Public-Private Partnerships Manual provides for a Contract Monitoring Framework. It goes on to state that; Given the large number of agreements that are involved in a typical PPP project, the

	<p>monitoring of a PPP Company's compliance requires significant attention and resources from government. A best practice is to set-up a Contract Monitoring Framework which covers the following major elements: (i) Risk Mitigation: the process of identifying, monitoring and managing risk to minimize and mitigate the project risks. (ii) Service Delivery and Performance: Ensuring that the PPP Company is achieving required service delivery to contractually defined performance standards. (iii) Relationship Management: Managing the structure of authority and accountability within the PPP service delivery framework. (iv) Contract Administration: Following administrative processes required to make sure all procedural and documentation requirements issues, such as periodic reporting and service quality reviews, are followed. (There are two major components - a Contract Management Team and Contract Management Plan - which need to be established for government's overall contract management framework). (4) Finally, Section 20 of the ICRC Act empowers the ICRC to monitor compliance with the terms and conditions of any concession agreement.</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>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The procuring or contract management authority must establish a risk mitigation mechanism.</p>	<p>No</p>
<p>If yes, please provide the relevant</p>	<p>n/a</p>

legal/regulatory provisions (if any):	
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?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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).	n/a
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	n/a

same technical qualifications as the original operator.	
If yes, please provide the relevant legal/regulatory provisions:	n/a
Flexibility to substitute non-controlling interest after the initial period.	n/a
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>Part 3, Section 2.6 of the ICRC National Policy on PPPs 2008 provides as follows; "Because PPP contracts are long-term, it is likely that the authority's requirements will need to be modified at some point to provide levels of service that are appropriate to changing political or economic requirements. The extent of any changes should be reasonable and in proportion to the scope of the original requirement and the project team should try to anticipate the changes that may be required and factor them into the project requirements during the project preparation phase. However, in the event that changes to the requirement become necessary during the contract term, the authority will need to provide compensation or adjust payment to the contractor if additional construction or higher maintenance and operational costs result from the change. Some of these costs may be passed on to users through an adjustment to the tariff where appropriate. The contract will protect the position of the authority and may require additional works or services to go through a separate tender process or be benchmarked against market prices in order to ensure that the contractor's costs are fair and reasonable. The Contractor must comply with all relevant legislation throughout the contract period, even if this results in higher costs. However if new legislation discriminates against the contractor, or PPP projects generally, then the contractor may seek compensation". Paragraph 88.3 of the Procurement Procedure Manual regulates Contract Amendment and states: Contract amendment may become necessary as a result of the application of additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices. The Supervising Department will: - Identify and agree with the Supplier, Contractor, Service Provider, or Consultant the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply; - Prepare a draft contract amendment document for approval by the relevant authority together with a report justifying the reasons for the</p>

	amendment; - Obtain approval from the relevant authority (and no-objection to amendment of Contract terms from the Bureau); - Distribute copies in the same way as the original contract.
If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
A change in the investment plan or duration of the contract.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Does the regulatory framework expressly regulate 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>Section 16 (26) of the Procurement Act provides that “all procurement contracts shall contain provisions for arbitral proceedings as the primary form of dispute resolution. Additionally, Section 54 of the Procurement Act regulates the administrative review systems for complains arising during the implementation of a contract. It provides as follows:</p> <p>(1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Act, or any regulations or guidelines made under this Act or the provisions of bidding documents.</p> <p>(2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer who shall: (a) within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier; (b) on reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision</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	No

implementation of the PPP.	
If yes, please specify:	n/a
The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.	No
The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.	Yes
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:	Clause 4.4 ICRC National PPP Policy provides that "There will normally be a Direct Agreement between the lenders and the Authority giving them the option to step in and replace the contractor prior to any termination for contractor default"
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	No

prescribes that the lender step-in rights should be regulated in the contract.	
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	Yes
Other	No
please specify:	n/a
Does the regulatory framework expressly establish the grounds for termination of a PPP contract?	No
If yes, please specify:	n/a
and provide the relevant legal/regulatory provisions:	n/a
If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?	n/a
If yes, please provide the relevant legal/regulatory provisions:	n/a
Are you aware of any reforms (in practice or in laws, regulations, policies, etc.) related to PPPs that: Took place in 2015, are ongoing and/or are planned to be adopted BEFORE June 1, 2016?	No
Please describe:	n/a
Are you aware of any reforms (in practice or in laws,	No

regulations, policies, etc.) related to PPPs that: 50.2. Are ongoing and/or are planned to be adopted AFTER June 1, 2016?	
Please describe:	n/a