

**BENCHMARKING PPP PROCUREMENT 2017 IN PORTUGAL**

<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>	The first PPP law was Decree-law 86/2003, established the general regime of a PPP: definition, concept, preparation, bid, adjudication, changes, audit and global monitoring. It was amended in 2006 by Decree-law 141/2006, with the goal to promote a better cooperation between the Ministry of Finance and the sectorial ministries, and improve the mechanisms of controlling the use of public resources in PPPs. Additionally, it introduced the obligation (which was not followed, due to a political decision, in the road sector PPPs between 2007 and 2009) for the inclusion of a public sector comparator (PSC). Finally, it changed several dispositions regarding the risk allocation and the renegotiation process. The last amendment was in 2012 by Decree-law 111/2012 and was focused on centralizing the PPP process in the Ministry of Finance in order to increase the transparency and control over PPPs. During our analysis, we shall refer to all of the aforementioned laws and decrees (as last amended by Decree-Law 111/2012) as the "PPP Law". Furthermore, Decree-Law No. 18 of 2008, which is the Public Contracts Code, sets forth the procurement process and the material regime for administrative contracts. From here on, our analysis will refer to the Public Contracts Code as "DL 18".
<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>	PPP Law (DL 111/2012): <a href="http://www.utap.pt/Publicacoes_utap/0270202713.pdf">http://www.utap.pt/Publicacoes_utap/0270202713.pdf</a> Public Contracts Code (DL 18/2008): <a href="http://www.utap.pt/Publicacoes_utap/18-2008.pdf">http://www.utap.pt/Publicacoes_utap/18-2008.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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Article 2/5(b) of Decree Law 111/2012, excludes multi-municipal systems concessions for supply of drinking water, wastewater disposal and management of solid urban waste.
<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 provisions:</b>	n/a
<b>Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):</b>	<p>The general website is <a href="http://www.utap.pt/">http://www.utap.pt/</a>, where generic information on PPP projects, regulatory framework may be found.</p> <p>The procuring entities may vary, depending on the nature of the public entity envisaging to contract via PPP. The PPP Law allows for the State (Government), all state public entities, autonomous funds and services, public companies to enter into PPP contracts with private entities.</p> <p>The process is subject to previous authorization and monitoring of the Minister of Finance (MoF), together with the sectorial Minister. The Minister of Finance has an active role throughout the PPP project cycle, since the decision to launch the PPP until its negotiation upon execution.</p> <p>From the Government side, the launching of a PPP is also controlled and conducted by "UTAP" - an administrative entity directly dependent on the Ministry of Finance, which works as a Technical Unit for the monitoring of PPP projects. Upon the Minister direction, UTAP is to elect and lead a project team, from 5 to 7 members (members to be appointed either by the Minister of Finance or the sectorial Minister).</p> <p>In addition, "UTAO" - a unit dependent on the Parliament - is also to monitor the execution of PPP Contracts.</p> <p>Before entering into force, PPP contracts are subject to a visa, to be issued by the Court of Auditors. The Court of Auditors is to give approval at financial close of PPP, being a condition precedent to drawdown under the financing arrangements. The Court of Auditors confirms that all the required procedures have been carried out correctly and that State budget allocations have been made for the project.</p>
<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>	Unidade Técnica de Acompanhamento de Projetos (UTAP) - The Technical Unit for the Monitoring of PPP Projects. It is an administrative entity directly dependent on the Ministry of Finance. <a href="http://www.utap.pt/">http://www.utap.pt/</a>
<b>If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.</b>	No

<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>	Yes
<b>Oversight of PPP implementation.</b>	Yes
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Preparation of PPPs</b>	Score: 54
<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>	Pursuant to Article 14 (1), 14 (2) and 14 (3) of DL 111/2012, the PPP project team submits to the Minister of Finance and to the relevant sectorial Minister, a reasoned report with a draft proposal. The report shall include the quantification of direct and indirect gross charges for the public sector, as well as the potential impact of risks to the public sector. When the entity envisaging the PPP is not the Government, (i.e public company) the management body of such entity is to be heard before the filing of the proposal with the ministers. 30 days upon the delivery of such report, it is for the Minister of Finance and the relevant sectorial Minister to decide on the terms and timing for the launching of the partnership.
<b>If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The decision to contract and the award of the contract is a joint decision of the member of the Government in charge with Finance and of the member of the Government in charge with the specific matter of the project in the cases set forth in Articles 16 (1) (a) and 18 (1) of DL 111/2012.
<b>Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process?</b>	No
<b>If yes, please specify the relevant authority</b>	n/a

<b>and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If yes, is a second approval by the same authority required before signing the PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Does the government integrate the prioritization of PPP projects with all other public investment project prioritization? (e.g. in the context of a national public investment system)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<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>	No
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	Yes
<b>please specify:</b>	The decision of launching a PPP depends exclusively, according to the Decree-Law 111/2012, on the existence of Value for Money when compared to other available public procurement figures. This means that all project are included in ministerial or national investment plans and only later are analyzed in order to assess if pursuing them under a PPP model is adequate. Accordingly, PPP are not separated into a dedicated project pipeline but a part of national investment plans.

<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>	Pursuant to Article 6 (1) (f) of the PPP Law, a cost-benefit analysis is conducted prior to the launch of the procurement process.
<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 Article 6 (1) (b) of the PPP Law, prior to the launch of the procurement process, a study of the likely budgetary impact in terms of revenue and expenditure, and its affordability, and the respective sensitivity analyzes either in search terms, or macroeconomic developments is conducted.
<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>	Pursuant to Article 6 (1) (l) of the PPP Law, prior to the launch of the procurement process, the itemized and detailed identification of risks assumed for each partner is conducted.
<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>	Pursuant to Article 6 (1) (h) of the PPP Law, prior to launching the procurement process, an analysis on the adequacy of the term of the partnership to specific circumstances and characteristics of each project, having a particular taken into account the repayment period of financing, and staggered payments by the public partner and the life of the respective infrastructure is conducted.
<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate</b>	n/a

<b>Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Article 6 (1) (a) of the PPP Law, prior to the launch of the procurement process, an analysis of the partnership model and the public sector benefits is done, including comparing the public sector benefits of using alternative procurement processes.
<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate</b>	n/a
<b>Market assessment (showing evidence of enough interest in the market for the project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Article 12 (2) of the PPP Law, prior to launching the procurement process, the project team needs to prepare and conduct the following: a) prepare the model justification to adopt, demonstrating the lack of comparable alternatives provided increased technical and operational efficiency or greater economic and financial feasibility; b) prepare the strategic and economic-financial study to support the launch of the partnership;
<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>	Most of the projects
<b>Does the procuring authority include a draft PPP contract in the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 42 (1) of the PPP Law, in the call for tenders, all of the essential conditions and terms to be included in the contract are made available.
<b>If no, please elaborate (provide examples):</b>	n/a
<b>Have standardized PPP model contracts and/or transaction documents been developed?</b>	No
<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>	n/a
<b>Does the procuring authority obtain the permits necessary to develop and operate the PPP project before calling for</b>	Yes

tenders in any of the following areas? Environmental permits.	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 6 (1) ( e ) of the PPP Law, the launch and the award of the agreement presupposes: the obtaining of permits, licenses and administrative advice required, such as the environmental and urban, of which the development of design depends on, so as to allow all the risk of operation is or may be properly transferred to the partner private;
Urban and zoning permits.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 6 (1) ( e ) of the PPP Law, the launch and the award of the agreement presupposes: the obtaining of permits, licenses and administrative advice required, such as environmental and urban, of which the development of design depends on, so as to allow all the risk of operation is or may be properly transferred to the partner private;
Other permits.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 6 (1) ( e ) of the PPP Law, the launch and the award of the agreement presupposes: the obtaining of permits, licenses and administrative advice required, such as environmental and urban, of which the development of design depends on, so as to allow all the risk of operation is or may be properly transferred to the partner private;
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate (provide explanation):	This topic is not expressly foreseen in the regulatory framework. However, it depends on the specific legal nature of the land in question. If the land is of the State's public domain, such land may be made available to the PPPCo under the relevant PPP contract, usually a public service or public works concession arrangements. Immovable property owned by private entities may be acquired by PPPCo under the mechanisms foreseen in the private law or by expropriation. Usually, the PPP contract foresees that upon end of the PPP contract, some or all of the assets forming part of the concession shall revert automatically and with no consideration to the public party.
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Right of way	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate (provide explanation):	This topic is not expressly foreseen in the regulatory framework. However, it depends on the specific legal nature of the land in question. If the land is of the State's public domain, such land may be made available to PPPCo under the relevant PPP contract, usually a public service or public works concession arrangements. Immovable property owned by private entities may be acquired by PPPCo under the mechanisms foreseen in the private law or by expropriation. Usually the PPP contract foresees that upon end of the PPP contract some or all of the

	assets forming part of the concession shall revert automatically and with no consideration to the public party.
<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 relevant legal/regulatory provisions:</b>	n/a
<b>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:</b>	135
<b>Obtaining the required approvals from other relevant authorities:</b>	105
<b>Preparing the draft PPP contract:</b>	20
<b>Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:</b>	105
<b>PPP Procurement</b>	Score: 83
<b>Are the bid evaluation committee members required to meet specific qualifications?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b>	Pursuant to Article 17 (3-7) of the PPP Law, the committee shall have 3 or 5 members, 1 or 2 members designated by the Government department related to the PPP project and 1 or 2 by the Technical Unit in charge of PPP (UTAP).
<b>If no, please elaborate (provide examples):</b>	n/a
<b>If yes, which of the following options best describes the required qualifications of the committee members? (Please select only one). The regulatory framework details the qualifications required and/or the specific membership of the bid evaluation committee.</b>	No
<b>If yes, please specify:</b>	n/a

<b>The regulatory framework requires generally sufficient qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.</b>	No
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Does the procuring authority issue a public procurement notice of the PPP?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 131 of DL 18, the notice shall be published in the Official Gazette and in the Official Journal of the European Union.
<b>If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	European Union - <a href="http://ted.europa.eu/TED/main/HomePage.do">http://ted.europa.eu/TED/main/HomePage.do</a> Portugal - <a href="https://dre.pt/web/guest/home/-/dre/list/normal?p_auth=BWju95yT&amp;_diarioDoDia_WAR_drefrontofficeportlet_serie=II">https://dre.pt/web/guest/home/-/dre/list/normal?p_auth=BWju95yT&amp;_diarioDoDia_WAR_drefrontofficeportlet_serie=II</a>
<b>Does the procuring authority grant the potential bidders a minimum period of time to submit their bids?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 136 of DL 18, there exist minimum deadlines for the submission of tenders in the case of an open procedure. These deadlines vary based on the method in which the public notice is advertised. For instance, when the public tender notice is published in the Official Journal of the European Union, the deadline is 47 days from the date of the dispatch of the notice. The number of days differs based on if a pre-announcement or a pre-information notice was published.
<b>and the time in calendar days :</b>	47
<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>	All of the contributors answered yes. Furthermore, Article 41 of DL 18 defines the terms that govern the contract formation stage. However, the law itself does not specify that the tender documents need to detail the stages.
<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>	Pursuant to Article 162 (1) of DL 18, a pre-qualification procedure is used in the case of a restricted procedure.
<b>If yes, do the tender documents specify the prequalification criteria in order to make them available to all of the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 164 (1) (h) of DL 18, when using a restricted procedure with pre-qualification, the minimum standards that the applicants must meet should be included.
<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>	None of the projects
<b>Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 50 (1) of DL 18, the clarifications necessary for a proper understanding and interpretation of parts of the procedure can/should be requested by interested parties, in writing, in the first third time period before the deadline for the submission of tenders.
<b>If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 50 (4) of DL 18, clarifications and corrections to the questions shall be available on the Internet portal dedicated to public procurement or the electronic platform used by the contracting authority and all bidders should be immediately notified.
<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>	Yes

<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 30 (1) of DL 18, the procuring authority can use the competitive dialogue procedure when the contract to be concluded, whatever its object, is particularly complex, making it impossible to adopt the tender or where tender is limited by prior qualification.
<b>If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 216 of DL 18, the body responsible for determining the winning bid in the competitive dialogue procedure notifies all the qualified applicants whose solutions had been admitted to the decision process, and notifies them of the final decision taken, and refers them to the report that contains the reasons for the decision.
<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>	Most of the projects
<b>Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?</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 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 Article 70 (1) of DL 18, proposals should be reviewed based on the attributes/criteria that are set out in the award criterion.
<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</b>	No

<b>procedure before awarding the PPP?</b>	
<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 regulatory framework details a specific procedure that the procuring authority must follow before awarding a PPP contract where only one proposal is submitted.</b>	n/a
<b>Please specify:</b>	n/a
<b>The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	n/a
<b>The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.</b>	n/a
<b>The regulatory framework does not include any provisions.</b>	n/a
<b>Other</b>	n/a
<b>please specify:</b>	n/a
<b>In practice, what is the average number of calendar days between the initial publication of the PPP public procurement notice and the award of the PPP? Number of calendar days:</b>	227.5
<b>Does the procuring authority publish the award notice?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 78 (1) of DL 18, the award notice is should be submitted for publishing on the Official Journal of the European within 30 days of the decision.
<b>If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	www.base.gov and <a href="http://ted.europa.eu/">http://ted.europa.eu/</a>

<b>Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 77 (1) of DL 18, all competitors are notified of the award decision simultaneously
<b>If no, please elaborate (provide examples):</b>	n/a
<b>If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 77 (3) of DL 18, the award notification includes the final report, which contains details on the grounds of the decision.
<b>Does the regulatory framework restrict or regulate in any way negotiations with the selected bidder between the award and the signature of the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 99 of DL 18, the procuring authority may propose adjustments to the PPP contract. These modifications can include: solutions proposed by another bidder. This is contingent on the modifications not being aspects that could change the outcome of the assessment or breaching the terms and conditions of the decision criteria.
<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>	None of the projects
<b>Does the procuring authority publish the PPP contract?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 33 (g) of the PPP Law, contracts are published/made available on UTAP's website.
<b>If yes, is it published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.utap.pt/">http://www.utap.pt/</a>
<b>Does the regulatory framework establish any exceptions where the procurement process described above does not</b>	No

apply or allows for a “fast track” procedure?	
If yes, please provide the relevant legal/regulatory provisions:	n/a
Unsolicited proposals	Score: USP not regulated
Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
If yes, please specify, to the best of your knowledge, the percentage of PPP investments in your country approved as unsolicited proposals during the last five (5) years:	n/a
Does the procuring authority conduct an assessment to evaluate unsolicited proposals?	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If yes, which of the following options best describes how unsolicited proposals are evaluated against existing government priorities? (Please select only one). The regulatory framework details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	n/a
If yes, please specify:	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities without	n/a

establishing specific procedures to achieve that goal.	
The regulatory framework does not include any provisions.	n/a
Other	n/a
please specify:	n/a
Among the unsolicited proposals approved within the last two (2) years, how many of them were a part of the existing government priorities? Please elaborate:	n/a
Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
Does the procuring authority use any of the following mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer.	n/a
Developer's fee (reimbursing the original proponent for the project development cost).	n/a
Bid bonus.	n/a
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	n/a
Other	n/a
please specify:	n/a

<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>PPP Contract Management</b>	Score: 69
<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>Pursuant to Article 19 (1) and 19 (2) of the PPP Law, when the complexity, the value or interest of the public partnership warrant it, members of the Government responsible for financing and project concerned may determine the establishment of a team to follow the initial phase of the contract concerned by jointly fixing the scope the task assigned to the respective team. The monitoring team should be formed in accordance with Article 10 of the PPP Law.</p> <p>Pursuant to Article 418 of DL 18, unless incompatible or unnecessary in the face of public works or public service nature granted, the contract should establish indicators for the purpose of monitoring and evaluating the performance of the dealer. These indicator should be based on the user's perspective and public interest, and contain calculation procedures for periodic assessment, particularly with regard to number of users and their satisfaction levels. The licensor may, under the contract and depending on the results of the application of the indicators listed in the preceding paragraph, give economic benefits or apply economic penalties to the dealer.</p>
<b>If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 19 (1) and 19 (2) of the PPP Law, when the complexity, the value or interest of the public partnership warrant it, members of the Government responsible for financing and project concerned may determine the establishment of a team to follow the initial phase of the contract concerned by jointly fixing the scope the task assigned to the respective team. The monitoring team should be formed in accordance with Article 10 of the PPP Law.
<b>Participation of the members of the PPP contract management team in the PPP procurement process.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Possibility to consult with PPP procurement experts when managing the PPP contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 25 of the PPP Law, should the development and execution of the PPP project need external support, such external support and consultation can be used. The technical unit (UTAP) is the one that provides the consultation.

<b>Elaboration of a PPP implementation manual or an equivalent document.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 35 (2) (o) of the PPP Law, UTAP develops document templates and makes recommendations likely to prove useful to many entities that are involved in the launch, monitoring and management of PPPs.
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>If there is a contract management team, in how many of the PPP projects procured within the last two (2) years did the management system and tools fully inform the contact management team? Please elaborate:</b>	All of the projects
<b>Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to Article 35 of the PPP Law, these contracts are to be financially and economically monitored by the Technical Unit ("UTAP") and the Minister of Finance ("MoF") or the sectorial Minister. In addition, the contracting entity is to monitor the contract, as well as the Court of Auditors is to assess the legality of the award, before the contract enters into force.</p> <p>Besides the Technical Unit UTAP, there is also a Technical Unit of Budgetary Support ("UTAO"), created by a Parliament Resolution no. 53/2006, 23 June, that is a specialized unit performing the evaluation and monitoring of PPPs agreements entered by any public entity, including the costs resulting from its conclusion, the negotiation procedures, any contractual changes and its accomplishment.</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>	Pursuant to Article 35 (2) (n) of the PPP Law, one of UTAP's function is to collect, process and centralize the economic and financial information and pooling of risks relating to partnership contracts to be signed or already concluded.
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Articles 35 and 36 of the PPP Law, Technical Unit for Monitoring of PPP projects provides such information on its website <a href="http://www.utap.pt">www.utap.pt</a> .
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Is PPP contract performance information publicly available online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.utap.pt/">http://www.utap.pt/</a>
<b>Does the regulatory framework expressly regulate a change in the structure (i.e. stakeholder composition) of PPPCo?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 323 of DL 18/2008, the PPP contracts and/or relevant annexes usually establish (i) limitations to changes in PPPCo structure during an initial period, (ii) the need for public partner's authorization for certain changes in the structure of PPPCo, (iii) the need for consent of the finance parties to those changes (in PPPs financed under project finance).
<b>If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in PPPCo during an initial period (e.g. construction and first five years of operation).</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>In case of a change affecting the controlling interest, the replacing entity must meet the same technical qualifications as the original operator.</b>	No
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions:</b>	<p>Pursuant to Article 21 of the PPP Law:</p> <p>1 -A negotiating committee should be established for the purposes of overseeing the contract renegotiation process.</p> <p>2 - For the purposes of the preceding paragraph, the service or entity representing the public partner must submit to the Government member responsible for design a proposal, duly reasoned, indicating, in particular, the basis for the beginning the negotiation process and the objectives that are to be achieved.</p> <p>3 - If the Government member responsible for the project in question decides to initiate the negotiation process, it must notify the Government member responsible for financing the project for the establishment of the negotiating committee, indicating, of course, depending on the complexity process, two or three members and one or two alternates to join that committee.</p>
<b>If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 313 of DL 18, the modification of the contract may not lead to the modification of main benefits covered by the contract subject or set up a way to prevent, restrict or distort competition guaranteed by the provisions of this Code on contract formation.
<b>A change in the risk allocation of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	<p>Pursuant to Article 282 of DL 18,</p> <p>1 - There is a place to restore the financial balance only in cases specified by law or, in the exceptional in the contract.</p> <p>2 - Notwithstanding the preceding paragraph, the contractor is only entitled to reinstate the balance when taking into account the allocation of risk between the parties, the fact relied upon in support of this right changes the assumptions on which the contractor determined the value of the services that are forced from the public contracting party knew or should not ignore these assumptions.</p> <p>3 - restore the financial balance produces its effects since the occurrence of the event changed the conditions referred to above, and performs in absence of contractual provisions, in particular, by extending the implementation period of the benefits or contract, the pre-review vices or assumption by the public contractor, the duty to pay the counterparty the amount corresponding to decrease in expected revenues or worsening charges provided for in the contract.</p> <p>4 - Resetting the financial balance made under this article is, for the event that gave rise</p>

	<p>to it, unique, complete and final for all contract period, without prejudice to such replacement power. It is partially deferred in relation to any effects specific event in question which, by their nature, are capable of a reasonable assessment immediately or on whose existence, incidence or quantification, do not exist in the agreement between the parties.</p> <p>5 - In the absence of contractual provisions, the amount/change in the financial balance corresponds to the amount necessary to restore the financial ratio that was initially agreed upon in the contract and is calculated according to the value of benefits to which the parties have undertaken and the effects resulting entitlement to restitution in value these same benefits.</p> <p>6 - restore the financial equilibrium cannot put any party in a more favorable situation that which resulted from the financial balance initially established, may not cover any losses that have stemmed from this balance or were inherent risk in the contract itself.</p>
<b>A change in the investment plan or duration of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Does the regulatory framework expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 7 (1) (d) of the PPP Law, risk sharing between the public and private partners should be clearly identified, and it should comply with several rules, including: the risk of financial unsustainability of the partnership, because not attributable to failure or modification unilaterally of the contract by the public partner, or the situation of force majeure must be, as much as possible, transferred to the private partner.
<b>Material Adverse government action.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 314 (1) (a) of DL 18: The contractor has the right to reinstate the financial balance of the contract according to the criteria set out in DL 18, where the foundation for change in the contract is: a) abnormal and unforeseen circumstances arise attributed the decision of the public contracting party, adopted from the exercise of its powers forming the contract, which should be reflected specifically in the contract;
<b>Change in the Law.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Refinancing.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<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>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions</b>	n/a
<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>	n/a
<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>	n/a
<b>The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.</b>	n/a
<b>Other</b>	n/a
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Pursuant to Article 322 (1) of DL 18, when there are contractual provisions in this direction, donors may, with the authorization of the contracting authority and under contractual arrangements, intervene in the contract in order to ensure continuity of the object of the same benefits and should ensure compliance with regulatory and legal standards underlying the services in question
<b>If yes, which of the following options best describes the lender step-in right? (Please select only one). The regulatory framework</b>	No

<b>expressly regulates the lender step-in rights.</b>	
<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>	Yes
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Does the regulatory framework expressly establish the grounds for termination of a PPP contract?</b>	Yes
<b>If yes, please specify:</b>	<p>A. Termination by the public party Article 333 of the PPCC</p> <ul style="list-style-type: none"> <li>- Breach of the contract, for a reason imputable to the private party;</li> <li>- Failure to comply with orders, directives, instructions of the public party;</li> <li>- Repeated opposition to the public party performance of its supervision powers;</li> <li>- Assignment of contractual position or subcontracting in breach of the relevant legislation;</li> <li>- If the amount of the penalties applied to the private party exceeds 20% of the contract price;</li> <li>- Failure to comply with judicial arbitration decisions related to the contract;</li> <li>- Failure to restore the amount of the performance guarantee;</li> <li>- If the private party presents itself to bankruptcy /insolvency proceedings, or if such bankruptcy /insolvency is declared by the court.</li> </ul> <p>Article 334 of the PPCC</p> <ul style="list-style-type: none"> <li>- On grounds of public interest</li> </ul> <p>Article 335 of the PPCC</p> <ul style="list-style-type: none"> <li>- Abnormal and unpredictable alteration of the circumstances upon which the parties decided to enter into the agreement.</li> </ul> <p>Article 423 of the PPCC</p> <ul style="list-style-type: none"> <li>- Deviation from the object of the concession</li> <li>- Total or partial cessation or suspension by the concessionaire of the execution or operation of public works or the management of public services, without any measure being taken to remove its cause</li> <li>- Refusal or impossibility of the concessionaire to take the concession back as a consequence of the seizure</li> <li>- Repetition of the situations that brought about the seizure after the concession has been taken back</li> <li>- Serious deficiency in the organization and development by the concessionaire of the concession activities in such a manner that it could compromise its continuity or regularity in accordance with the conditions set out in the law or in the contract</li> <li>- Obstruction to the seizure</li> </ul>

	<p>- Seizure of the concession for the maximum term permitted by the law or by the contract</p> <p>B. Termination by the private party Article 332 of the PPCC (please note that termination by the private party requires a prior court or arbitration decision, except for termination for delay in monetary obligations)</p> <ul style="list-style-type: none"> <li>- Abnormal and unpredictable alteration of circumstances;</li> <li>- Breach of contractual obligations for a reason attributable to the public party;</li> <li>- Delay in the compliance with monetary obligations, in excess of 6 months or where the outstanding amount exceeds 25% of the contract price;</li> <li>- Illicit performance of the public party's legal powers/rights regarding definition of the contractual frame, in such terms that the maintenance of the contract should be contrary to bona fide principles;</li> <li>- Failure to comply with judicial arbitration decisions related to the contract</li> </ul>
<b>and provide the relevant legal/regulatory provisions:</b>	Articles 332, 333, 334, 335, 423 of DL 18
<b>If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Articles 333, 334, and 335 of DL 18 set out the consequences for the termination of the contract. The consequences are: a) in the case of termination due to public interest, fair compensation to which the contractor is owed, where this compensation constitutes actual damages and lost profits, deducted from the benefit of the anticipated gains b) due to abnormal change or unpredictable circumstance, contractor is entitled to fair compensation, c) due to interest on arrears, net amounts due.
<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>	No
<b>Please describe:</b>	n/a