

BENCHMARKING PPP PROCUREMENT 2017 IN SENEGAL (PPP)

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>In Senegal two categories of contracts are considered as PPP according to the World Bank definition: delegation of Public services (concession of contracts) and Partnership contracts (Marchés de partenariat). They are both defined in the Administrative Obligations Code (Le Code des Obligations de l'Administration): Law No. 65-51 of July 19, 1965 including code of administration obligations as modified by Law No. 2006-16 of June 30, 2006, and each of them has its own rules.</p> <p>Partnership contracts are defined as contracts by which a public body entrusts a third party, for a specified period, with a global mission that includes the financing and implementation, including construction, rehabilitation or transformation, of tangible or intangible investments, as well as their maintenance, their exploitation or management and, if appropriate, other benefits, which contribute to the exercise by the concerned public authority of the public service mission entrusted to it .</p> <p>The duration of the partnership contract is determined based on the amortization period of investments or the terms of their funding. The other party receives staggered payment on the contract by the public party, which may be related to performance objectives assigned to him.</p> <p>Partnership Contracts are regulated by (1) Law No. 2014-09 of February 20, 2014 governing partnership agreement in Senegal, as amended by Law No. 2015-03 of February 12, 2015; and (2) its implementing Decree no. 2015-386 of 20 March 2015 (the "PPP Law") a</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>Administrative Obligations Code: http://www.jo.gouv.sn/spip.php?article4920</p> <p>Law No. 2014-09: file:///C:/Users/WB497731/Downloads/SN_Loi%202014-09%20relative%20aux%20contrats%20de%20partenariat%20(2).pdf</p> <p>Decree no. 2015-386: Not available online</p> <p>PP Regulations: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2016-August-22-24/Contributions_NV/Tanzania_EN.pdf</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 legal/regulatory provisions:	n/a

Water and irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Energy generation and distribution	Yes
If yes, please provide the relevant legal/regulatory provisions:	Law No. 2014-09 art.2 §3 states that the provisions of the PPP Law apply to all economic and social sectors, except for those regulated by a specific regulation, specifically the sectors of energy, mines and telecommunication
Telecom	Yes
If yes, please provide the relevant legal/regulatory provisions:	Law No. 2014-09 art.2 §3 states that the provisions of the PPP Law apply to all economic and social sectors, except for those regulated by a specific regulation, specifically the sectors of energy, mines and telecommunication
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):	According to Article 2 of PPP law n 2014-09, any public authority, including the State, public institutions, local authorities, agencies, corporations that have majority public owners, as well as national companies can be procuring authorities.
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):	Article 3 of the PPP Law provides for: PPP National Committee (Comité National d'Appui aux Partenariats Public-Privé or the "CNAPPP"), located in the Ministry of Investment Promotion and Partnerships and responsible for preliminary project assessment, capacity building and

	<p>technical support for contracting authorities through the project lifecycle, and PPP promotion.</p> <p>Article 4 of the PPP Law provides for: The Infrastructure Council (Le Conseil des Infrastructures): It is an independent body with 12 members comprising 3 magistrates, 3 private sector representatives, 3 civil society and consumer associations representatives, and 3 members of Parliament. The Infrastructure Council is responsible for dispute resolution (related to the procurement or implementation of PPP contracts), regulation of procedures, and auditing. Its activities are no longer restricted to infrastructure projects since the adoption of the 2014 Law.</p> <p>Article 5 of the PPP Law provides for: The Commission Bidding (La Commission d'Appel d'Offres).</p> <p>The National Agency responsible for the promotion of investments and major projects ("APIX"): (Ministère de la Promotion des Investissements, des Partenariats et du développement des Téléservices de l'Etat): www.investinsenegal.com APIX S.A is an implementing agency located in the Ministry of Investment Promotion and Partnerships and is responsible for investment promotion, business climate improvement, development of special economic zones, and the implementation of major public works.</p> <p>Finally, Directorate of Finance and Public-Private Partnerships (la Direction Centrale des Marchés Publics or "DCMP"), located in the Ministry of Investment Promotion and Partnerships, is acting as the national PPP Unit pending the effective settlement of the National PPP Committee. The Directorate is the technical arm of the Committee. It used to be a Directorate located in the Ministry of Infrastructure, Transports and Energy (2009-2012) and a PPP Division in the Ministry of Economy and Finance (2012-2013).</p>
If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.	<p>No</p>
PPP policy guidance and capacity building for other public authorities.	<p>Yes</p>
PPP promotion among the public and/or private sectors in national and international forums.	<p>Yes</p>
Technical support in implementing PPP projects.	<p>Yes</p>
Gatekeeping (approval of PPP projects).	<p>Yes</p>

Procurement of PPPs.	No
Oversight of PPP implementation.	Yes
Other	No
please specify:	n/a
Preparation of PPPs	Score: 50
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):	Article 10 of the PPP Law provides that the procurement process for the entering into a partnership agreement is subject to the prior favorable opinion of the Ministry in charge of Finance (among others)
If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 22 of the PPP Law No. 2014-09 provides that: once approved by the Minister of Finance, the partnership agreement is transmitted for information to the Council of the National Infrastructures and the National Committee of Support to Public Private Partnerships.
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	Article 10 of the PPP Law provides that the procurement process for the entering into a partnership agreement is subject to the prior favorable opinion of the Council of Infrastructure, (in addition to that of the Ministry in charge of Finance) and subject to the authorization of the Prime Minister upon consultation of the CNAPPP or any deliberative body within the public entity.
and provide the relevant	Article 10 of the PPP Law No. 2014-09

legal/regulatory provisions (if any):	
If yes, is a second approval by the same authority required before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Does the government integrate the prioritization of PPP projects with all other public investment project prioritization? (e.g. in the context of a national public investment system)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	In Senegal, PPPs are the main pillar of the National Strategy for Economic and Social Development (SNDES), which is the country's strategic plan for development and economic growth over the next decade, which is implemented in conjunction with a Priority Action Plan (PAP) for five years: (2014-2018) which identified 26 prioritized projects searching for financing through PPP since the implementation of SNDES. Furthermore, PPPs are part of the Plan Sénégal Emergent ("PSE"): a special event called "Sen PPP Finances" has been created to promote successful PPPs or PPPs to be financed within the PSE framework.
If yes, which of the following options best describes the way your government prioritizes PPP projects? (Please select only one). The regulatory framework provides for the inclusion of PPPs in the national public investment system and/or details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	No

If yes, please specify:	n/a
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	No
The regulatory framework does not include any provisions.	No
Other	Yes
please specify:	In Senegal, PPPs are the main pillar of the National Strategy for Economic and Social Development (SNDES), which is the country's strategic plan for development and economic growth over the next decade, which is implemented in conjunction with a Priority Action Plan (PAP) for five years: (2014-2018) which identified 26 prioritized projects searching for financing through PPP since the implementation of SNDES. Furthermore, PPPs are part of the Plan Sénégal Emergent ("PSE"): a special event called "Sen PPP Finances" has been created to promote successful PPPs or PPPs to be financed within the PSE framework.
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:	Some of the projects
Which of the following assessments are conducted when identifying and preparing a PPP? (check all that apply): 10.1. Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the project)	Yes
Relevant legal/regulatory provision (if any)	Article 8 of the PPP Law provides that the CNAPPP shall assess the economic, financial, legal and administrative reasons, which lead the public entity to proceed with the elaboration of

	a partnership agreement.
Is there a specific methodology?	Yes
If yes, elaborate.	<p>Article 8 of the PPP Law provides: Partnership agreements involve a preliminary assessment by the contracting authority with the assistance of the National Committee of Support to Public Private Partnerships, showing the economic, financial, legal and administrative reasons which lead the Contracting Authority to initiate the procurement procedure of such a contract. The National Committee of Support to Public Private Partnerships develops in its area of expertise, the methodology determining the criteria for developing this assessment as provided by order of the Minister of partnerships.</p> <p>This evaluation includes a comparative analysis of different options, particularly in terms of overall cost, risk-sharing and performance, and in comparison with sustainable development concerns.</p> <p>Furthermore, Article 9. Conditions of use of partnership contracts The partnership agreements may be concluded that if, after the screening assessment, at least one of the following conditions is met:</p> <ul style="list-style-type: none"> a) given the complexity of the project, the public entity is not objectively able to define one and in advance the technical means to meet their needs or establish the legal or financial package for the project; b) the project is of an emergency nature, when it comes to catching a delay prejudicial to the public interest affecting the achievement of community facilities or the exercise of a public service mission, whatever the causes of delay, or face an unpredictable situation; c) given either the characteristics of the project, the requirements of public service, the public person is charged or shortcomings and difficulties observed in the implementation of similar projects, the use of such a contract shall provide a balance between the benefits and disadvantages more favorable than other contracts of public order. The standard of deferred payment does not in itself be decisive.
Affordability assessment, including the identification of the required long term public commitments (explicit and implicit)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology?	n/a
If yes, elaborate	n/a
Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Article 8 of the PPP Law provides that the evaluation of PPP projects includes a comparative analysis of different options, particularly in terms of risk-sharing and performance ...

Is there a specific methodology?	No
If yes, elaborate	n/a
Financial viability or bankability assessment.	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology?	n/a
If yes, elaborate	n/a
Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives	Yes
Relevant legal/regulatory provision (if any)	Article 8 of the PPP Law provides that the assessment consists of a comparative analysis of different options.
Is there a specific methodology?	No
If yes, elaborate	n/a
Market assessment (showing evidence of enough interest in the market for the project)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology?	n/a
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):	Article 17 of the PPP Law provides that the draft PPP contract shall be attached to the bidding documents. Such documents are only given to the pre-selected candidates.
If no, please elaborate (provide examples):	n/a
Have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
Does the procuring authority obtain the permits necessary to develop and operate the PPP project before calling for tenders in any of the following areas? Environmental permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Urban and zoning permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Does the procuring authority make available to PPPCo	Yes

the necessary land or right of way to develop the PPP project (if any)? Land	
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 6 of the PPP Law provides that when a partnership agreement covers a public domain, this shall be considered as an authorization to occupy the public domain during the period of validity of the agreement.
If no, please elaborate (provide explanation):	n/a
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Right of way	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide explanation):	The PPP Law does not mention specifically the right of way that a procuring authority would make available to PPPCo in order for it to develop the PPP project. In fact, Article 6 of the PPP Law includes a general provision that when a partnership agreement covers a public domain, this shall be considered as an authorization to occupy the public domain during the period of validity of the agreement.
Does the regulatory framework establish any exceptions where the preparation process described above does not apply or allows for a "fast track" procedure?	Yes
If yes, please provide the relevant legal/regulatory provisions:	PPP law n 2014-09 art. 8 §3: the law provides for a shorter prior assessment in case of emergency (as defined by the law). Furthermore, Article 13 provides that the contracting authority may opt for a one step tender (instead of the regular 2 step tender) with prequalification. In this case, the procuring authority needs to send a note justifying the choice of such a procedure and solicit the advice of the Infrastructure Council on the basis of this note. The choice of the procedure should be published. Finally, if the call for tenders results in unsuccessful deals, a limited tender can be proceeded with under conditions specified by decree.
What is the average number of calendar days that the procuring authority	15

spends on each of the following activities to prepare a PPP project? Conducting the required assessments:	
Obtaining the required approvals from other relevant authorities:	145
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:	No data
PPP Procurement	Score: 58
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)	Article 5 of the PPP Law provides that a "Commission d'Ouverture des Plis et d'Evaluation des Offres" shall be constituted by the contracting authority. Moreover, Article 26 of Decree 2015-386 provides that the National Support Committee of PPP and the Ministry in charge of Finance could constitute as independent experts part of the projects. Therefore, we conclude that the bid evaluation committee is generally composed of representatives of the procuring public authority who have been designated according to their specific technical skills/experience linked to the PPP project. The bid committee members are civil servants who belong to a particular ministry or public body.
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	Yes

specific membership of the bid evaluation committee.	
If yes, please specify:	Article 28 of Decree 2015-386 provides that: If the PPP contract is initiated by the State, the Bid Committee must be constituted by the followings: 2 persons representatives of the contracting authority, 1 representative of the Ministry in charge of Finance, 1 representative of the judicial agent of the State, 1 representative of the monitoring of finance, 1 representative of the Ministry in charge of PPP. If the PPP contract is initiated by the local community (i.e municipality), the Bid Committee must be constituted by the regional surveillance of the partnership and 1 accountant of the local community.
The regulatory framework requires generally sufficient qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.	No
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):	Article 16 of the PPP Law provides for the issuance of a public procurement notice of the PPP that intends to inform any potential bidders on the existence of the PPP project. The publication is made in a local or international newspapers or online.
If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	http://www.marchesdusenegal.com/
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):	Article 17 of the PPP Law No. 2014-09 provides that the pre-qualified candidates have to submit their tenders within a period fixed by the tender dossier, which cannot be less than forty five days.
and the time in calendar days :	45
Do the tender documents detail the stages of the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 17 of the PPP Law, the tender documents shall include the draft partnership agreement and the supplementary documents to be provided such as: tender submission rules; specification books or the templates of the schedules of the partnership agreement; templates of deposit to be paid and letters to be provided; detailed functional program; as well as the place and the deadline for the submission of the bids as well as the timeline for the review of the bids.
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):	Articles 15 and 16 of the PPP Law provide the terms and conditions of the pre-qualification stage to select a number of bidders to present the full proposal as well as its process. Generally, the pre-selected bidders must be the candidates that have adequate financial and technical capacity. The pre-selection of the bidders must be carried out by the contracting authority in collaboration with the Bid Committee.
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):	Article 14 of the PPP Law provides that the PPP contract is awarded to the bidder whose bid is evaluated the best bid in light of the selection criteria set out in the tender documents. Additionally, Article 15 provides that: The pre-selection of bidders is exclusively in function of their capacity to perform the agreement and according to the following criteria: (i) specific technical experience, (ii) material and human resources available to the project, and (iii) financial capacity. Furthermore, Article 16 of the PPP Law provides that the pre-qualification file is established by the contracting authority. It contains at least the following: all the instructions for the preparation of applications for pre-qualification; A description of the contractual structure; The list of documents and other information

	<p>requested candidates to confirm their ability ; The specific criteria under which the pre-qualification is done ...</p> <p>Finally, the contracting authority decides, after consulting the tender commission on the qualifications of each candidate who applied and it rules solely on the basis of the criteria set out in the pre-qualification application .</p>
<p>Among the PPP procurement processes conducted within the last two (2) years that had a prequalification stage, how many of them included prequalification criteria in the tender documents? Please elaborate</p>	<p>All of the projects</p>
<p>Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Practice</p>
<p>If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>As a general principle, the procuring authority should ensure transparency and equality of treatment for the fairness of the procurement procedures in Senegal. In fact, Article 18 of the PPP Law provides the following: The contracting authority ensures equal treatment of all candidates. In particular, it must abstain to provide information in a discriminatory manner that would likely favor candidates over others, nor reveal solutions proposed or confidential information of a candidate without their authorization.</p>
<p>Among the PPP procurement processes conducted within the last two (2) years where questions were submitted, in how</p>	<p>Most of the projects</p>

<p>many were the questions and clarifications disclosed to all of the potential bidders? Please elaborate:</p>	
<p>Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 18 of the PPP Law provides that dialogue can take place between the contracting authority and each bidder, including the possibility to be involved in discussions between the contracting authority and the bidder about the content of the tenders</p>
<p>If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 18 of the PPP Law provides that the results of such discussion shall be communicated to all the potential bidders by the contracting authority.</p>
<p>Among the PPP procurement processes conducted within the last two (2) years where any other type of dialogue was conducted, in how many was the content and the result of the dialogue disclosed to all of the potential bidders? Please elaborate:</p>	<p>Most of the projects</p>
<p>Does the procuring authority require the bidders to prepare and present a financial model</p>	<p>Yes</p>

with their proposals ?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide examples):	n/a
Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 20 of the PPP Law provides that the Bid Committee shall proceed with the evaluation of all the offers on the basis of the criteria provided in the tender documents.
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:	Most of the projects
In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If yes, what of the following options best describes the way the procuring authority deals with	n/a

<p>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.</p>	
<p>Please specify:</p>	n/a
<p>The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</p>	n/a
<p>The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.</p>	n/a
<p>The regulatory framework does not include any provisions.</p>	n/a
<p>Other</p>	n/a
<p>please specify:</p>	n/a
<p>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:</p>	150
<p>Does the procuring authority publish the award notice?</p>	No
<p>If yes, please specify the means of publication and provide the relevant</p>	n/a

legal/regulatory provisions (if any):	
If yes, is the public procurement award notice published online?	n/a
If yes, please specify the website:	n/a
Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 20 of the PPP Law provides that the contracting authority has to inform by writing the results to all the candidates.
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	Some of the projects

<p>of them were the terms and conditions changed between the award and the signature of the PPP contract? Please elaborate:</p>	
<p>Does the procuring authority publish the PPP contract?</p>	Yes
<p>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</p>	Article 22 of the PPP Law provides that the partnership agreements are published in the Official Gazette except for the confidential provisions.
<p>If yes, is it published online?</p>	No
<p>If yes, please specify the website:</p>	n/a
<p>Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a "fast track" procedure?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Article 13. 3 of the PPP Law provides that apart from the bid process, the partnership agreement can be concluded through a direct agreement or a negotiated procedure. In this case, the PPP procurement process shall be done by one step with pre-selection process upon favorable opinion of the Conseil des Infrastructures.</p> <p>Additionally, Article 29 provides that a contract governed by the provisions of this Act can be passed by direct agreement by a contracting authority, after consulting the Board of referral to the National Committee on Infrastructure Support to Public Private Partnerships in the following exceptional cases: (1) Where the provision or operation of works or facilities related to a work must be carried out under conditions with the characteristics of extreme urgency in order to ensure continuity of public service in conditions of delays incompatible with the implementation of the tender procedure under this Act, and that the contracting authority cannot ensure itself the service. The extreme urgency must be motivated by circumstances of the contracting authority. In this case, the contract has a duration which cannot exceed two years; and (2) Where the infrastructure cannot be made or used, for technical reasons or reasons relating to the protection of exclusive rights, by a single trader.</p>
<p>Unsolicited proposals</p>	Score: 58
<p>Does the regulatory framework allow for the submission</p>	Yes

of unsolicited proposals? (if no, skip to section F)	
If yes, please provide the relevant legal/regulatory provisions:	Article 24 of the PPP Law provides that a private operator can address an unsolicited proposal to the contracting authority.
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:	No Data
Does the procuring authority conduct an assessment to evaluate unsolicited proposals?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Article 24 of the PPP Law provides that unsolicited proposals shall be subject to a negotiated procedure, in which the prior authorization of the Prime Minister or other competent authority (including the Public entity) upon a required prior opinion of the National Committee and the Ministry in charge of Finance.
If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 25 of the PPP Law provides that the unsolicited proposals must be for a project that the estimated overall cost is superior to an amount set by a decree and fulfill at least two of the below conditions:</p> <ul style="list-style-type: none"> - the private financing of the project is at least 70% of the initial investment costs of the project; - the project is competitive compared to the general conditions of the market; -the project is a technological innovation or advanced technology and provides necessary viable economic and ecological alternatives to the contracting authority. <p>Furthermore, Article 26 provides that the National Committee of Support to Public Private Partnerships, after verifying compliance with the conditions specified in Article 25, shall issue an opinion on the following points: The overall coherence of the project and its compliance with the government's policy...</p>
If yes, which of the following options best describes how unsolicited	No

<p>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>If yes, please specify:</p>	<p>n/a</p>
<p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	<p>Yes</p>
<p>The regulatory framework does not include any provisions.</p>	<p>No</p>
<p>Other</p>	<p>No</p>
<p>please specify:</p>	<p>n/a</p>
<p>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:</p>	<p>None of the projects</p>
<p>Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	<p>Yes</p>

If yes, please provide the relevant legal/regulatory provisions (if any):	Article 28 of the PPP Law provides that when the unsolicited proposal does not comply with the conditions provided at point 36 above, it will be subject to a competitive PPP procurement procedure.
Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	No
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.	No
Developer's fee (reimbursing the original proponent for the project development cost).	No
Bid bonus.	Yes
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No
Other	No
please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 28 of the PPP Law, the proponent of the unsolicited offer participates in the tender under the same conditions as other candidates. However, in some cases, he can benefit from a margin of preference after the approval of the National Committee of Support to Public Private Partnerships (CNAPPP)
PPP Contract Management	Score: 54

Has the procuring or contract management authority established a system to manage the implementation of the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any)	n/a
If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Participation of the members of the PPP contract management team in the PPP procurement process.	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Possibility to consult with PPP procurement experts when managing the PPP contract.	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document.	n/a
If yes, please provide the relevant	n/a

legal/regulatory provisions (if any):	
Other	n/a
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:	n/a
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):	Article 38 of the PPP Law provides that the PPP agreement is subject to a periodical evaluation by the National Committee Support of the PPP; and Article 39 adds that a periodical audit is provided by the "Conseil des Infrastructures"
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring or contract management authority must periodically gather information on the performance of the PPP contract.	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	Article 39 adds that a periodical audit is provided by the "Conseil des Infrastructures"
The procuring or contract management authority must establish a risk mitigation mechanism.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract performance information must be available to the public.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other	No
please specify:	n/a
Is PPP contract performance information publicly available online?	No
If yes, please specify the website:	n/a
Does the regulatory framework expressly regulate a change in the structure (i.e. stakeholder composition) of PPPCo?	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 31 of the PPP law provides that any change in PPPCo during the initial period shall be subject to a prior agreement between the relevant parties by an endorsement of the partnership agreement by the new stakeholder.
If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in PPPCo during an initial	No

period (e.g. construction and first five years of operation).	
If yes, please provide the relevant legal/regulatory provisions:	n/a
In case of a change affecting the controlling interest, the replacing entity must meet the same technical qualifications as the original operator.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Flexibility to substitute non-controlling interest after the initial period.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/ regulatory provisions:	<p>Article 30 of the PPP Law provides that a partnership contract can be complemented by an additional contract passed by direct agreement by a contracting authority where a project in progress was the subject of a partnership agreement and for reasons of economic necessity, social or cultural or for reasons relating to the consistency requirements in the technical and financial management of the project, the contracting authority decides its extension.</p> <p>The procurement authorization of additional contract by direct agreement is given by the Prime Minister, on the referral of the National Committee of Support to Public Private Partnerships, after consulting the Board of Infrastructure and the Minister of Finance. Additional services will not change the overall nature of the contract. Reviews and prior authorization must be requested upon submission of a report justifying the appropriateness of the works, supplies or services, the extension of objects and their relationship to the original project. Finally, specific terms of additional contracting by local authorities are specified by decree.</p>

	<p>Furthermore, Article 31 details the conditions for awarding endorsements. It provides that subject to the provisions of Article 30, all changes of works, goods, services or time of the initial contract by the holder or the contracting authority should be subject to prior agreement between the parties by an amendment to the partnership agreement. These changes cannot be substantial, and without a need for a new award procedure. A modification is considered substantial: (1) When it introduces conditions which, had they been included in the initial award procedure, would have allowed the selection of another candidate than initially withheld; (2) When it changes the economic balance of the partner favor in the partnership contract for a cost greater than or equal to thirty percent (30%) of the original amount of the withholding financial offer; or (3) When it substantially alters the scope of the partnership agreement. This is particularly the case when the amendment has the effect or purpose of either substituting the original contract by another contract, or changing the subject of the original contract. Finally, any amendment to the PPP contract must be authorized by the Infrastructure Council, after consulting the Minister of Finance and National Support to Public Private Partnerships Committee.</p>
<p>If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Article 31 details the conditions for awarding endorsements. It provides that subject to the provisions of Article 30, all changes of works, goods, services or time of the initial contract by the holder or the contracting authority should be subject to prior agreement between the parties by an amendment to the partnership agreement. These changes cannot be substantial, without need for a new award procedure. A modification is considered substantial: (1) When it introduces conditions which, had they been included in the initial award procedure, would have allowed the selection of another candidate than initially withheld; (2) When it changes the economic balance of the partner favor in partnership contract for a cost greater than or equal to thirty percent (30%) of the original amount of the withholding financial offer; or (3) When substantially alters the scope of the partnership agreement. This is particularly the case when the amendment has the effect or purpose of either substituting the original contract by another contract, or changing the subject of the original contract. Finally, any amendment to the PPP contract must be authorized by the Infrastructure Council, after consulting the Minister of Finance and National Support to Public Private Partnerships Committee.</p>
<p>A change in the risk allocation of the contract.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>A change in the investment plan or</p>	<p>Yes</p>

duration of the contract.	
If yes, please provide the relevant legal/regulatory provisions:	Article 30 of the PPP Law provides that a partnership contract can be complemented by an additional contract passed by direct agreement by a contracting authority where a project in progress was the subject of a partnership agreement and for reasons of economic necessity, social reasons, cultural reasons or for reasons relating to the consistency requirements in the technical and financial management of the project, the contracting authority decides its extension.
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.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 35 of the PPP Law, according to the termination conditions provided for in the contract, the partnership contract can be terminated in the case of force majeure at the initiative of either party.
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	Article 37 of the PPP Law provides that disputes arising from the execution and interpretation of the PPP Law can be settled through the Senegalese Court or through arbitration if they are not amicably settled.
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.	No
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.	No
Other	Yes
please specify:	Disputes arising from the execution and interpretation of the PPP Law can be settled through the Senegalese Court or through arbitration if they are not amicably settled.
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	Yes

failure to meet service obligations?	
If yes, please provide the relevant legal/regulatory provisions:	<p>Article 34 of the PPP Law provides that: The operator of the PPP project may not transfer the contract to a third party without the prior consent of the public authority, as provided by the contract. The Partnership contract may in particular provide a transfer either to institutions that financed all or part of the project or for the benefit of a third party suggested by such lenders.</p> <p>The third party, to whom the partnership contract is transferred, must present sufficient financial, technical and legal guarantees. Furthermore, if the nature of the contract requires it, the latter must prove that he is capable of ensuring the continuity of the service as well as the equality of users before the public service.</p>
If yes, which of the following options best describes the lender step-in right? (Please select only one). The regulatory framework expressly regulates the lender step-in rights.	No
If yes, please specify:	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	Yes
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
Other	No
please specify:	n/a
Does the regulatory framework expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify:	The PPP contract may be terminated in Senegal if any of the following circumstances occur: serious failure of the procuring authority; serious misconduct of the project operator; reason of public interest; change in the financial balance of the project due to an action or decision of the procuring authority
and provide the relevant legal/regulatory provisions:	Article 35 of the PPP Law

If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>Article 35 provides that if the PPP agreement is terminated by a serious failure of the contracting authority, the operator can claim damages to the contract authority.</p>
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?	<p>No</p>
Please describe:	<p>n/a</p>
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?	<p>No</p>
Please describe:	<p>n/a</p>