

**BENCHMARKING PPP PROCUREMENT 2017 IN SRI LANKA**

<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>	There is no specific law expressly providing for procuring PPPs in Sri Lanka. However, the Guidelines on Government Tender Procedure Part II for Private Sector Infrastructure Projects (BOO/BOT/BOOT Projects) Revised Edition of January 1998 (hereinafter the "PSIP Guidelines") and the Procurement Guidelines and Manual of 2006 (respectively the "Procurement Guidelines" and "Procurement Manual") issued by the Ministry of Finance (successor to the National Procurement Agency) facilitate PPPs. The following analysis will be based on those regulations.
<b>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</b>	<a href="http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html#GuidelinesOnPrivateSectorInfrastructureProjects">http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html#GuidelinesOnPrivateSectorInfrastructureProjects</a>
<b>Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors? Transportation.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Water and irrigation</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Energy generation and distribution</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Telecom</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Health</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Education</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a

<b>Other</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):</b>	The Procurement Guidelines indicate that “Procuring Entity” means a Government ministry, provincial council, Government department, statutory authority, government corporation, government owned company, local authority or any subdivision thereof or any other body wholly or partly owned by the Government of Sri Lanka or where the Government of Sri Lanka has effective control of such body, that engages in Procurement.
<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>	Public Finance Division of the Treasury Department <a href="http://www.treasury.gov.lk/about-us-pfd.html">http://www.treasury.gov.lk/about-us-pfd.html</a>
<b>If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.</b>	Yes
<b>PPP policy guidance and capacity building for other public authorities.</b>	Yes
<b>PPP promotion among the public and/or private sectors in national and international forums.</b>	Yes
<b>Technical support in implementing PPP projects.</b>	Yes
<b>Gatekeeping (approval of PPP projects).</b>	No
<b>Procurement of PPPs.</b>	No
<b>Oversight of PPP implementation.</b>	Yes
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Preparation of PPPs</b>	Score: 33
<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>	Section 227 of the PSIP Guidelines related to Preliminary Screening states that all priority projects identified by the respective line Ministries should be discussed informally with the BII and a financial and technical viability report to screen such projects need to be prepared jointly by the proposing agency and vetted by the BII for clearance by the Ministry of Finance and Planning. Once the clearance from the Ministry of Finance and

	<p>Planning is obtained the line Ministry should present a Cabinet Memorandum including formal Project Proposal seeking approval of the Cabinet to proceed with the Project.</p> <p>Moreover, according to section 231, priority projects considered by the Government of Sri Lanka (GOSL) for development through the private sector, once identified and screened by the relevant line Ministry with the assistance of the BII (in regard to the economic and financial viability of the project), should be submitted to the Ministry of Finance and Planning for preliminary clearance.</p>
<b>If yes, is a second approval by the Ministry of Finance or Central Budgetary 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>Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process?</b>	Yes
<b>If yes, please specify the relevant authority</b>	Cabinet
<b>and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 227 of the PSIP Guidelines, once the clearance from the Ministry of Finance and Planning is obtained the line Ministry should present a Cabinet Memorandum including formal Project Proposal seeking approval of the Cabinet to proceed with the Project.
<b>If yes, is a second approval by the same authority required before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to section 235 of the PSIP Guidelines, since negotiations on project proposals may result in legal obligations on the part of the Government, recommendation for any contractual commitments and Government guarantees, if any should be made by the relevant line Ministry/BII in consultation with the Treasury and Attorney-General and be approved by the Cabinet prior to entering into any formal contractual commitment. Section 289 furthermore indicates that, before signature of the IA, the final proposal with the agreed draft agreements should be submitted to the Cabinet for approval. The line Ministry shall submit the Cabinet Memorandum and the CANC recommendations along with a report compiled by the BII, which will include:</p> <ul style="list-style-type: none"> <li>(i) the results of the appraisal of the PC summarized by BII, its consultants and the relevant State Agency involved;</li> <li>(ii) the final price and other major features negotiated;</li> <li>(iii) the major features of the negotiated IA.</li> </ul>
<b>Does the government integrate the prioritization of PPP projects with all other public investment project</b>	Yes

prioritization? (e.g. in the context of a national public investment system)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
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.	Yes
Other	No
please specify:	n/a
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)	Pursuant to section 2.3.1 of the procurement guidelines, prior to a request being made for the appointment of a PC, the Procuring Entity shall confirm to the NPA that (a) it has carried out initial environmental examination, (IEE) environmental impact assessment

	(EIA), social impact assessment (SIA), and all other such procurement preparedness activities as may be relevant to the project.
<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>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology?</b>	n/a
<b>If yes, elaborate</b>	n/a
<b>Risk identification, allocation and assessment (risk matrix)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology?</b>	n/a
<b>If yes, elaborate</b>	n/a
<b>Financial viability or bankability assessment.</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology?</b>	n/a
<b>If yes, elaborate</b>	n/a
<b>Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology?</b>	n/a
<b>If yes, elaborate</b>	n/a
<b>Market assessment (showing evidence of enough interest in the market for the project)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology?</b>	n/a
<b>If yes, elaborate</b>	n/a
<b>Among the PPP projects procured within the last two (2) years, for how many of</b>	Most of the projects

<p>them were all of the required assessments conducted? Please elaborate:</p>	
<p>Does the procuring authority include a draft PPP contract in the request for proposals?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	Section 244 of the PSIP Guidelines is related to Contents of RFP and requires to indicate the Contractual, Financial and Legal Framework (v), including (a) drafts of the contracts and agreements which will need to be entered into between the private and public sector agencies involved.
<p>If no, please elaborate (provide examples):</p>	n/a
<p>Have standardized PPP model contracts and/or transaction documents been developed?</p>	Yes
<p>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</p>	Bidding documents : <a href="http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/standard-bidding-documents.html">http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/standard-bidding-documents.html</a>
<p>Does the procuring authority obtain the permits necessary to develop and operate the PPP project before calling for tenders in any of the following areas? Environmental permits.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Urban and zoning permits.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Other permits.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	Pursuant to section 2.3.1 of the Procurement guidelines, prior to a request being made for the appointment of a PC, the PE shall confirm to the NPA that:–(b) it has completed land acquisition and resolved compensation, re-settlement issues, including relocation of utilities and such other matters which are necessary for the uninterrupted implementation of the project.
<p>If no, please elaborate (provide explanation):</p>	n/a

<b>Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Right of way</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 2.3.1 of the Procurement guidelines, prior to a request being made for the appointment of a PC, the PE shall confirm to the NPA that:–(b) it has completed land acquisition and resolved compensation, re-settlement issues, including relocation of utilities and such other matters which are necessary for the uninterrupted implementation of the project.
<b>If no, please elaborate (provide explanation):</b>	n/a
<b>Does the regulatory framework establish any exceptions where the preparation process described above does not apply or allows for a “fast track” procedure?</b>	No
<b>If yes, please provide the 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>	No data
<b>Obtaining the required approvals from other relevant authorities:</b>	No data
<b>Preparing the draft PPP contract:</b>	No data
<b>Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:</b>	No data
<b>PPP Procurement</b>	Score: 78
<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>	According to section 233, the Project Committee will be constituted once the Cabinet in principle approves the project. The Project Committee will be appointed by the Secretary to the Treasury at the request of the Secretary of the line Ministry in liaison with BII. Its membership will include representatives of the following Ministries/Departments: I. Line Ministry II. Ministry of Finance & Planning III. BOI/BII

	<p>IV. Relevant State Agency/ies</p> <p>V. Attorney-General's Department</p> <p>VI. Any other Ministry/Department/Agency as appropriate:</p> <p>VII. Central Environmental Authority</p> <p>The Project Committee may co-opt consultants/experts from time to time to obtain expert advice.</p>
<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>	Yes
<b>If yes, please specify:</b>	<p>Section 2.7.6 of the Procurement Manual relates to the Composition of Project Procurement Committee for major contracts :</p> <p>a) The number of members in a Project Procurement Committee shall be three;</p> <p>b) If the Project Director, is a class 1 officer of the Sri Lanka All island Services then he shall be the chairperson otherwise a representative of the ministry who shall be a class 1 officer of the Sri Lanka All island Services shall the Chairperson; If the project Director is not a class 1 Officer of the Sri Lanka All Island Services the CAO under the Personnel approval may delegate the Chairmanship to the Project Director</p> <p>c) If Project Director is not the Chairman then he shall be a member;</p> <p>d) One member shall be a senior officer from the Procuring Entity who is knowledgeable in the subject matter of the Procurement under consideration;</p> <p>e) One member (Class 1 officer) shall be a representative from the Ministry;</p> <p>The Chairperson of the TEC or his nominee from the TEC members shall participate as a nonmember at all meetings for Project Procurement Committee to make clarifications.</p> <p>The Procurement Specialist of the project shall be the nonmember secretary for Project Procurement Committee.</p>
<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</b>	Pursuant to section 249 of the PSIP Guidelines, the Secretary, Ministry of Finance and Planning will invite proposals in the international and national press and give publicity



<b>provide the relevant legal/regulatory provisions (if any):</b>	through local diplomatic representatives as well as through Sri Lankan Missions abroad and the electronic media. The press notice may also be sent to all potentially interested firms that have been in contact with the line Ministry/line Agency/BO/BII or otherwise expressed an interest.
<b>If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.treasury.gov.lk/news-and-events/38-national-planning/public-finance.html?start=10">http://www.treasury.gov.lk/news-and-events/38-national-planning/public-finance.html?start=10</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 section 252 of the PSIP guidelines, the period for submitting proposals will normally be three months. This may be increased to six months depending on the nature of the project. Proposals received after the stipulated closing date and time or due to the reasons of critically non-conformity with the RFP, (e.g. non submission of a proposal guarantee) should be rejected by the Cabinet Appointed Negotiating Committee.
<b>and the time in calendar days :</b>	90
<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>	Pursuant to section 244 (iv) of the PSIP Guidelines, are included in the RFP elements of the Evaluation and Selection Process: This part will provide the main information required from the bidders, including the technical parameters of the project, the basis for screening and scheme of evaluation of the proposals, and subsequent steps. The information provided in this section must be set out in sufficient detail so that the selection is unambiguous and process is clearly understood by the potential investors or bidders.
<b>If no, please elaborate (provide examples):</b>	n/a
<b>Does the procurement process include a pre-qualification stage to select a number of qualified bidders to present the full proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 240 of the PSIP Guidelines, the Cabinet Appointed Negotiating Committee may decide to whether the pre-qualification of proponents should be done. However all large scale projects (estimated cost US\$ 100 Mn. Or more), and/or in the case of technically complex projects, the solicitation of bids should be preceded by a pre-qualification of proponents.
<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 section 3.12 of the Procurement Manual, advertisements and invitations for prequalification should have the following information: eligibility requirements for potential bidders, suppliers and contractors.

<p><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></p>	<p>Some of the projects</p>
<p><b>Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>According to section 247 of the PSIP Guidelines, the RFP will have instructions inviting bidders to seek clarifications or supplementary information in writing, within the time stipulated but not exceeding two months following the date of issue of the RFP. Cabinet Appointed Negotiating Committee may convene a bidder's conference on their own or if requested by at least two bidders within a specified period of time not exceeding two months from the date of publication of the RFP.</p>
<p><b>If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>According to section 247 of the PSIP Guidelines, the Project Committee in consultation with the relevant Ministry, will supply written answers to all questions, and send copies of these to all parties which have purchased the RFP, provided such answers will not amend or add to the RFP in any way.</p>
<p><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></p>	<p>Most of the projects</p>
<p><b>Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?</b></p>	<p>No</p>
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?</b></p>	<p>n/a</p>

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Among the PPP procurement processes conducted within the last two (2) years where any other type of dialogue was conducted, in how many was the content and the result of the dialogue disclosed to all of the potential bidders? Please elaborate:</b>	n/a
<b>Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Section 271 of the PSIP Guidelines provides a methodology to evaluate the financial plan, including a financing model. The main criteria are: (i) the financial standing and resources of the sponsor and its bankers in relation to the size of the project; (ii) the soundness and flexibility of the financing plan in terms of the Project Company’s liquidity position throughout the life of the project, and its ability to survive adverse events which could result in a loss or reduction of cash flow; (iii) the quality and clarity of the financial model.
<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 section 7.9.10 of the Procurement guidelines, bids shall be first evaluated strictly according to the criteria and methodology specified in the bidding documents and such evaluated. Bids shall be compared to determine the lowest evaluated substantially responsive Bid.
<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>	Some of the projects
<b>In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 7.12.2 of the Procurement guidelines provides for sole proposals:</p> <p>(a) Even when only one bid is received, after wide publicity has been given, the bidding process may still be considered valid, if the prices quoted are reasonable in comparison to market values.</p> <p>(b) In such a situation, if prices quoted by the single bidder are high, the TEC may negotiate with the bidder for a downward revision of prices.</p>
<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>	<p>No</p>
<b>Please specify:</b>	<p>n/a</p>
<b>The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	<p>Yes</p>
<b>The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.</b>	<p>No</p>
<b>The regulatory framework does not include any provisions.</b>	<p>No</p>
<b>Other</b>	<p>No</p>
<b>please specify:</b>	<p>n/a</p>
<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>	<p>232.5</p>
<b>Does the procuring authority publish the award notice?</b>	<p>Yes</p>
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to section 8.10.1 of the Procurement guidelines, the PE should publish promptly in its website (if available), the NPA website and/or any other appropriate media, the following particulars in regard to contracts on which awards have been made:</p> <p>(a) description of the items/Works for which bids were invited;</p> <p>(b) total number of bids received;</p> <p>(c) name of the successful bidder;</p> <p>(d) amount at which the contract was awarded;</p> <p>(e) in the case of a contract awarded to a foreign principal who has a local agent, the name of the local agent.</p>

	Moreover, if the contract value exceeds SLR 250,000,000 (Sri Lanka Rupees Two Hundred and Fifty Million), publication of contract awards in at least one widely circulated national newspaper, the NPA website and government gazette is mandatory (section 8.10.2).
<b>If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	Website of the Procurement Entity
<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>	According to section 8.2.1 of the Procurement guidelines, the Secretary to the Line Ministry shall within one week of being informed of the recommendation of the Cabinet Appointed Procurement Committee/Ministry Procurement Committee inform in writing to all the bidders of the selection of the successful bidder and the intention to award the contract to such bidder.
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Does the regulatory framework restrict or regulate in any way negotiations with the selected bidder between the award and the signature of the PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Among the PPP procurement processes conducted within the last two (2) years, in how many of them were the terms and conditions changed between the award and the signature of the PPP contract? Please elaborate:</b>	None of the projects
<b>Does the procuring authority publish the PPP contract?</b>	No
<b>If yes, please specify the means of publication and provide the relevant</b>	n/a

<b>legal/regulatory provisions (if any):</b>	
<b>If yes, is it published online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a “fast track” procedure?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	<p>According to section 2.7.2 of the Procurement guidelines,</p> <p>(a) In extraordinary situations, a ministry may submit a Cabinet memorandum, specifying the special circumstances, which require a deviation from the general procurement procedures in order to meet such situation, and shall seek Cabinet approval to appoint a Standing Cabinet Appointed Procurement Committee indicating the limits of Procurement.</p> <p>(b) The Technical Evaluation Committee for such Standing Cabinet Appointed Procurement Committee shall be appointed by the NPA.</p>
<b>Unsolicited proposals</b>	Score: 92
<b>Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Supplement 23 to the Procurement Guidelines provides rules applicable to unsolicited proposals.
<b>If yes, please specify, to the best of your knowledge, the percentage of PPP investments in your country approved as unsolicited proposals during the last five (5) years:</b>	No data
<b>Does the procuring authority conduct an assessment to evaluate unsolicited proposals?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>According to section 3.1 of the Supplement 23 to procurement guidelines, to proceed with such an unsolicited/standalone proposal, the Secretary to the relevant line ministry or the Head of a Government Agency must initially be satisfied that such proposal appears to be exceptionally beneficial to the country in terms of funding or otherwise, and it is desirable to proceed with such proposal on an urgent basis without going through the normal procurement procedure. In deciding so the following as appropriate should be considered by the head of the Department.</p> <p>a. the proposal and the associated funding offer being important and relevant to the Public Investment Plan of the relevant line Ministry or the Government Agency, within the Government’s overall policy strategies and compared to available funding</p>

	<p>arrangements ; and /or</p> <p>b. the proposed investor commands reputation and the knowhow that is otherwise scarcely available in the field related to the Project and hence it is desirable to proceed with the Project with such investor in comparison to pursuing the open competitive bidding process.</p> <p>Such proposal may be submitted to the Chairman of the Standing Cabinet Appointed Review Committee along with the observations of the National Planning Department and the External Resources Department, requesting advice of the Cabinet Appointed Review Committee on the way forward.</p>
<b>If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to section 3.1 (a) of the Supplement 23 to procurement guidelines, the proposal and the associated funding offer being important and relevant to the Public Investment Plan of the relevant line Ministry or the Government Agency, within the Government's overall policy strategies and compared to available funding arrangements.
<b>If yes, which of the following options best describes how unsolicited proposals are evaluated against existing government priorities? (Please select only one). The regulatory framework details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</b>	No
<b>If yes, please specify:</b>	n/a
<b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b>	Yes
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Among the unsolicited proposals approved within the last two (2) years, how many of them were a part of the existing government priorities? Please elaborate:</b>	Some of the projects
<b>Does the procuring authority initiate a competitive PPP procurement procedure when</b>	Yes

<b>proceeding with the unsolicited proposal?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 237 (a) of the PSIP Guidelines, line Ministries, Agencies and BOI/BI receiving unsolicited proposals should have them processed according to the procedures applicable to solicited proposals.
<b>Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to section 252 of the PSIP guidelines, the period for submitting proposals will normally be three months. This may be increased to six months depending on the nature of the project. Proposals received after the stipulated closing date and time or due to the reasons of critically non-conformity with the RFP, (e.g. non submission of a proposal guarantee) should be rejected by the Cabinet Appointed Negotiating Committee.
<b>and the time in calendar days:</b>	90
<b>Does the procuring authority use any of the following mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer.</b>	No
<b>Developer's fee (reimbursing the original proponent for the project development cost).</b>	No
<b>Bid bonus.</b>	No
<b>Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>PPP Contract Management</b>	Score: 40
<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>	According to section 233 of the PSIP Guidelines, the Project Committee will service project development and will also be responsible for guiding the project through its various stages of implementation. Furthermore, section 234 indicates that the other responsibilities of the Project Committee are as follows: (ii) Monitor the progress during project development phase and report to CANC



	periodically. (iii) Co-ordinate all activities including scheduling meetings, correspondence, etc., relating to the project.
<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>	According to section 233 of the PSIP Guidelines, the Project Committee will be constituted once the Cabinet in principle approves the project. The Project Committee will be appointed by the Secretary to the Treasury at the request of the Secretary of the line Ministry in liaison with BII. Its membership will include representatives of the following Ministries/Departments (...).
<b>Participation of the members of the PPP contract management team in the PPP procurement process.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The Project Committee (PC) includes representatives of the Line Ministry and the Ministry of Planning and Finance. The Ministry of Finance and Planning, the Line Ministry and the PC participates in various stages of the PPP procurement process including but not limited to: Preliminary Clearance (Guideline 231), preparing the request for proposal (Guideline 234), recommendations for Contractual Commitment (Guideline 235), preliminary and final evaluation, Announcement of Proposal (Guideline 249), Issuing of Request For Proposal (Guideline 250), preparing the Letter of Intent (LOI) (Guideline 275).
<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>	According to section 233 of the PSIP Guidelines, the Project Committee may co-opt consultants/experts from time to time to obtain expert advice.
<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 PSIP guidelines 285 (i), is signed an Implementation Agreement between the Government and the Project Company. Guideline 288 furthermore provides that the contents of the Implementation Agreement will be negotiated by the Bureau of Infrastructure Investment, the line Ministry or Agency involved and the Project Company who may be assisted by their legal advisors and will be submitted to the CANC for approval.
<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>	None 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>	According to section 234 of the PSIP Guidelines, the other responsibilities of the PC are as follows: (ii) Monitor the progress during project development phase and report to CANC periodically.
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<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>	According to section 234 of the PSIP Guidelines, the other responsibilities of the PC are as follows: (ii) Monitor the progress during project development phase and report to CANC periodically.
<b>The procuring or contract management authority must establish a risk mitigation mechanism.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The PPP contract performance information must be available to the public.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Is PPP contract performance information publicly available online?</b>	No
<b>If yes, please specify the website:</b>	n/a
<b>Does the regulatory framework expressly regulate a change in the structure (i.e.</b>	No

stakeholder composition) of PPPCo?	
If yes, please provide the relevant legal/regulatory provisions:	n/a
If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in PPPCo during an initial period (e.g. construction and first five years of operation).	n/a
If yes, please provide the relevant legal/regulatory provisions:	n/a
In case of a change affecting the controlling interest, the replacing entity must meet the same technical qualifications as the original operator.	n/a
If yes, please provide the relevant legal/regulatory provisions:	n/a
Flexibility to substitute non-controlling interest after the initial period.	n/a
If yes, please provide the relevant legal/regulatory provisions:	n/a
Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/ regulatory provisions:	Section 8.13.4 (supplement 14) of the Procurement guidelines is related to Variations to contracts
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.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Pursuant to Section 8.13.4 (supplement 14) of the Procurement guidelines, no variation order on change of scope which involves the increase of contract price shall be issued without the prior approval obtained following the procedure indicated. A: Net variation within 10% of the Contract Award Price: Head of the Department (HD) or Project Director (PD) may approve the variation by revising the TCE, if required and subject to the following: a) By obtaining explanatory note from the persons involve; b) By satisfying that:

	<p>i. Change of scope could not have foreseen at the time of award of contract;</p> <p>ii. The change of scope is justifiable;</p> <p>iii. The quantity variation/s are marginal or are due to unforeseen situation/s.</p>
<b>A change in the risk allocation of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>A change in the investment plan or duration of the contract.</b>	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>	According to section 8.14.1 of the Procurement guidelines, extensions of time may be granted by an authorized person, in exceptional circumstances or due to Force Majeure situations, when the contractor or the supplier establishes to the satisfaction of the PE, that delays are attributable to circumstances beyond the control of the contractor/supplier.
<b>Material Adverse government action.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Change in the Law.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Refinancing.</b>	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>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions</b>	<p>Sections 5.4.14, 5.4.15 and 5.4.16 of the Procurement guidelines provides for Dispute Resolution :</p> <p>(a) All disputes arising out of contract agreements shall be governed in accordance with the provisions of the Arbitration Act No. 11 of 1995 of Sri Lanka, as amended.</p>

	<p>(b) A reference must be made in the bidding documents, that settlement of disputes would be by way of arbitration and a detailed arbitration clause should be included in the contract to such effect.</p> <p>(c) For Foreign Funded Projects dispute resolution provisions recommended by the Foreign Funding Agency shall be complied with.</p> <p>Moreover, subject to the provisions of the Arbitration Act, the Rules of Arbitration of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL) or any other set of acceptable rules are recommended for usage.</p> <p>The venue of arbitration shall be in Sri Lanka, for GoSL funded projects. The venue of arbitration for Foreign Funded Projects would be determined in accordance with the requirements of the Foreign Funding Agency</p>
<p><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></p>	<p>No</p>
<p><b>If yes, please specify:</b></p>	<p>n/a</p>
<p><b>The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.</b></p>	<p>No</p>
<p><b>The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.</b></p>	<p>Yes</p>
<p><b>Other</b></p>	<p>No</p>
<p><b>please specify:</b></p>	<p>n/a</p>
<p><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></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	<p>n/a</p>
<p><b>If yes, which of the following options best describes the lender step-in right? (Please select only one). The regulatory framework</b></p>	<p>n/a</p>

<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>	n/a
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	n/a
<b>Other</b>	n/a
<b>please specify:</b>	n/a
<b>Does the regulatory framework expressly establish the grounds for termination of a PPP contract?</b>	No
<b>If yes, please specify:</b>	n/a
<b>and provide the relevant legal/regulatory provisions:</b>	n/a
<b>If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Are you aware of any reforms (in practice or in laws, regulations, policies, etc.) related to PPPs that: Took place in 2015, are ongoing and/or are planned to be adopted BEFORE June 1, 2016?</b>	Yes
<b>Please describe:</b>	In 2015, the 19th Amendment to the Sri Lankan Constitution enabled the creation of a National Procurement Commission (NPC) to formulate fair, equitable, transparent, competitive and cost effective procedures and guidelines for the procurement of goods and services, works, consultancy services and information systems by government institutions. The establishment and operation process is ongoing.
<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

