

**BENCHMARKING PPP PROCUREMENT 2017 IN TUNISIA**

<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>	Currently, the new PPP specific law is: Law n. 2015-49 dated 27 November 2015 related to contracts between the public and the private sector (PPP) and published in the Official gazette dated 1st December 2015. Additionally, Decree No. 2014-1039 covers both PPPs and concession contracts. Although PPP and Concession contracts are both governed by the same Unit (l'Instance nationale des PPP), this new law still coexist with the previous concession laws: In fact, PPPs in Tunisia were previously governed by Law No. 2008-23 dated on April 1st 2008 relating to the concessions regime (referred to as the "Concessions Law"). Based on such law, decrees were enacted in order to describe the Concessions procedures and regime: (i) the Concession Procurement Decree No. 2010-1753 of July 19, 2010 setting the conditions and procedures of grant of the concessions complemented by Decree No. 2013-4631; (ii) Decree n 2008-2965 dated 8 September 2008, on the establishment of a unit in charge of the follow-up on concessions, (iii) Decree No. 2013-4631 amending Decree No. 2010-1753, and (iv) Decree No 2013-4630 of November 18, 2013 creating the Concessions Follow-up Unit within the Government Presidency (Unité de Suivi des Concessions au sein de la Présidence du Gouvernement), that substituted and repealed the original Decree No. 2008-2965 of September 8, 2008, creating the Concessions Follow-up Unit.
<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.legislation.tn/en/detailtexte/Loi-num-2008-23-du-01-04-2008-jort-2008-028__2008028000231?shorten=cObv">http://www.legislation.tn/en/detailtexte/Loi-num-2008-23-du-01-04-2008-jort-2008-028__2008028000231?shorten=cObv</a> <a href="http://www.legislation.tn/en/detailtexte/D%C3%A9cret-num-2013-4630-du-18-11-2013-jort-2013-095__2013095046303?shorten=c1UT">http://www.legislation.tn/en/detailtexte/D%C3%A9cret-num-2013-4630-du-18-11-2013-jort-2013-095__2013095046303?shorten=c1UT</a> <a href="http://www.legislation.tn/en/detailtexte/D%C3%A9cret-num-2013-4631-du-18-11-2013-jort-2013-095__2013095046313?shorten=c1Ua">http://www.legislation.tn/en/detailtexte/D%C3%A9cret-num-2013-4631-du-18-11-2013-jort-2013-095__2013095046313?shorten=c1Ua</a> <a href="http://www.legislation.tn/en/detailtexte/D%C3%A9cret-num-2010-1753-du-19-07-2010-jort-2010-059__2010059017533?shorten=c1Q7">http://www.legislation.tn/en/detailtexte/D%C3%A9cret-num-2010-1753-du-19-07-2010-jort-2010-059__2010059017533?shorten=c1Q7</a> <a href="http://www.cnudst.rnrt.tn/jortsrc/2015/2015a/ja0962015.pdf">http://www.cnudst.rnrt.tn/jortsrc/2015/2015a/ja0962015.pdf</a> <a href="http://www.cnudst.rnrt.tn/jortsrc/2014/2014f/jo0222014.pdf">http://www.cnudst.rnrt.tn/jortsrc/2014/2014f/jo0222014.pdf</a>
<b>Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors? Transportation.</b>	No
<b>If yes, please provide the relevant</b>	n/a

<b>legal/regulatory provisions:</b>	
<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 Concessions Law and the PPP Law do not determine a unique PPP procuring authority, but they mention in articles 3 that the public service is procured under the control of the public person entitled to grant it. This includes the Prime Minister and the Ministries of each relevant sector (the State), the local governments, public institutions and any other public establishment, companies or enterprises whose text of establishment allows them to grant concessions. Therefore, the procuring authority depends on the supervisory authority on the sector under consideration
<b>In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the</b>	Yes

<b>PPP program (PPP Unit)?</b>	
<b>If yes, please indicate its name, and its website (if available):</b>	<p>The PPP Units in Tunisia are:</p> <p>(1) Strategic commission for PPP is set-up with the Prime ministry and defines the national strategy in matter of PPP (law n 2015-49 article 37)</p> <p>(2) Private Public Partnership Head Office at Finance Ministry which intervenes in the PPP project preparation (Finance Ministry website: <a href="http://www.finances.gov.tn">www.finances.gov.tn</a>)</p> <p>(3) The general direction of public-private partnership (DGPPP) (<a href="http://www.finances.gov.tn/images/organigramme_DGPPP.pdf/">www.finances.gov.tn/images/organigramme_DGPPP.pdf/</a>)</p> <p>(4) The Concessions Follow-up Unit (established to The Prime Minister by decree N 2008-2965 dated 8th September 2008)</p>
<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>	No
<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</b>	Yes

<b>procurement process?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 7 of the PPP law No. 49-2015 provides that the assessment study is exposed to the opinion of the minister of finance
<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>	A General Commission is set-up with the Prime ministry which reviews the documentation and assists the public entity entering in a PPP by providing technical support and help in the preparation of partnership contracts (as well as for the conclusion and the implementation of such contracts). The General Commission gives a binding opinion regarding the PPP project.
<b>and provide the relevant legal/regulatory provisions (if any):</b>	Articles 7 and 38 of the PPP law No. 49-2015
<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</b>	Article 19a1 of the PPP law 49-2015 provides that the PPP contract is presented to the General Commission before its signature in order to express an opinion

<b>legal/regulatory provisions (if any):</b>	confirming that of the procuring authority no later than one month from the date of presentation. .
<b>Does the government integrate the prioritization of PPP projects with all other public investment project prioritization? (e.g. in the context of a national public investment system)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 4 of the PPP Law provides that the PPP project must be aligned with the predefined needs of the government and it must be adjusted according to national and local priorities and development goals.
<b>If yes, which of the following options best describes the way your government prioritizes PPP projects? (Please select only one). The regulatory framework provides for the inclusion of PPPs in the national public investment system and/or details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</b>	No
<b>If yes, please specify:</b>	n/a
<b>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without</b>	Yes

<b>establishing a specific procedure to achieve that goal.</b>	
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Among the PPP projects procured within the last two (2) years, how many of them were prioritized along with all other public investment projects? Please elaborate:</b>	None of the projects
<b>Which of the following assessments are conducted when identifying and preparing a PPP? (check all that apply): 10.1. Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 7 of the PPP Law No. 49-2015 provides that: the procuring authority should subject the PPP project to a study of the legal, economic, financial, social and technical aspects, as well as to an environmental influence study in order to justify the choice of the PPP model over other contractual forms.
<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</b>	Yes

<b>(explicit and implicit)</b>	
<b>Relevant legal/regulatory provision (if any)</b>	Article 7a1 2 of the law 49-2015 provides that the procuring authority must prepare an assessment study of the effects of completion of the PPP project on the public balance, as well as on the financial situation of the public person and the availability of appropriations necessary to accomplish the project .
<b>Is there a specific methodology?</b>	No
<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>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Practice
<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate</b>	n/a
<b>Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Practice
<b>Is there a specific methodology?</b>	No
<b>If yes, elaborate</b>	n/a
<b>Market assessment (showing evidence of enough interest in the market for the project)</b>	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 them were all of the required assessments conducted? Please elaborate:</b>	None of the projects
<b>Does the procuring authority include a draft PPP contract in the request for proposals?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate (provide examples):</b>	The PPP law does not include an explicit provision requiring the procuring authority to include a draft PPP contract in the request for proposals. However, Article 8 provides that mandatory provisions regarding the PPP agreements will be defined in a Decree. (such text of application is not yet issued)
<b>Have standardized PPP model contracts and/or transaction documents been developed?</b>	No
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	n/a
<b>Does the procuring authority obtain the permits necessary</b>	Yes

<b>to develop and operate the PPP project before calling for tenders in any of the following areas? Environmental permits.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Practice
<b>Urban and zoning permits.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Other permits.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 24 of the PPP Law n 2015-49 provides that: unless provided otherwise in the PPP contract, PPPCo acquires the right on properties and real estate (as well as the rights and obligations of the owner to the extent allowed by law) for the duration of the contract. Additionally, Article 25 of the Law provides that if the PPP contract requires PPPCo to occupy parts of the public properties, then it is considered licensed to do so for the duration of the contract. (the process of occupation, as well as the related rights and obligations are managed by the applicable legislation).
<b>If no, please elaborate (provide explanation):</b>	n/a
<b>Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP</b>	Yes

<b>project (if any)? Right of way</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 25 of the Law provides that if the PPP contract requires PPPCo to occupy parts of public properties, then it is considered licensed to do so for the duration of the contract. (the process of occupation, as well as the related rights and obligations are managed by the applicable legislation: Reference: code of straight realties enacted by law n 65-5 dated 12 February 1965)
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Articles 8, 9, 10 of the PPP law 49-2015 of 27 November 2015 provide the following: 8: As a principle, the competitive procedure is used in PPPs. However, exceptionally, the alternative use of competitive negotiation or direct negotiations in accordance with the conditions set by the PPP Law is permitted 9: The recourse to the competitive negotiation happens whenever the procuring authority has failed to assess their needs relating to the methodology, solutions, and finance... 10: provides for a fast track procedure in relation to National Defense, for protection of public properties in case of emergency or when only private entities can manage the project. In fact, it states that PPP contracts are concluded through direct negotiation in the following cases: (1) for national defense or public security reasons; (2) to secure the continuity of the public service in case of unpredictable events beyond the control of the public person); or (3) If the contract's object can exclusively be exploited by the patent holder.
<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>	120
<b>Obtaining the required approvals</b>	90

<b>from other relevant authorities:</b>	
<b>Preparing the draft PPP contract:</b>	90
<b>Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:</b>	360
<b>PPP Procurement</b>	<b>Score: 63</b>
<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>	The current PPP Law No. 49-2015 does provides for an evaluation committee in Tunisia, but it does not specify the qualifications that its members are required to meet. However, Article 38 of the PPP Law provides that such qualifications would be defined by a decree (that has not been published yet). Furthermore, Article 8 of the Decree No. 2010-1753 provides that "The mission of approval of the invitation to tender file, opening, examination, classification and the adoption of the regulation applicable to the grant of the concession is entrusted to a special sub commission in charge of the elaboration of the preparatory stages for the grant of the concerned concession whose creation, composition and functioning methods are the subject of decision of the conceding party", and Article 2 of the decree N 2008-2965 dated September 8th, 2008 provides that: "The unit of concessions follow-up is composed of a president, a reporter and three to five members, appointed by order of the Prime Minister from among the executives reputed to be skilled in the legal, financial and technical fields. The president of the commission may call for the representatives of any department or sector whose opinion is deemed necessary for the commission works."
<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</b>	No

<b>the qualifications required and/or the specific membership of the bid evaluation committee.</b>	
<b>If yes, please specify:</b>	n/a
<b>The regulatory framework requires generally sufficient qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.</b>	Yes
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Does the procuring authority issue a public procurement notice of the PPP?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Article 4 of the Decree No. 2010-1753 provides: "The concessions are granted after a call for tender by way of invitation to tender published at least 30 days before the date limit fixed for the reception of the candidacies by way of press and eventually by any other mean of material or immaterial publicity. The deadline of the tender's presentation is fixed taking into account notably the importance of the concession and the invitation to tender file study necessary for the preparation of the tenders and the presentation the candidacies".
<b>If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	On the concerned procuring authority's official website (depending on the nature of the PPP contract)
<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>	Article 4 of the Decree No. 2010-1753 provides that "The concessions are granted after call for tender by way of invitation to tender published 30 days at least before the date limit fixed for the reception of the candidacies by way of press and eventually by any other mean of material or immaterial publicity".
<b>and the time in calendar days :</b>	30
<b>Do the tender documents detail the stages of the procurement process?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate (provide examples):</b>	A future decree will detail the stages of the procurement process. Currently, the followed practice is the preparation of a memorandum of obligations
<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>	Article 8 of the PPP Law No. 49-2015 provides that except for specific projects, a prequalification process is put in place. Additionally, Article 42 of the Public Procurement Decree No. n 2014-1039 provides that the tender is restricted when it is preceded by a prequalification process. (Furthermore, Article 5 of the Decree No. 2010-1753 provides: "The invitation to tender may be either open or restricted preceded by a pre-qualification or a call for expression of interest (...)")
<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>	Article 42 of the Public Procurement Decree No. n 2014-1039 provides that the tender is restricted when it is preceded by a prequalification process that takes place in two phases: - The first phase is to publish a notice for expression of interest, based on the specification terms of reference that includes the conditions for participation, methodology and criteria to select the candidates. - The second phase is to invite the shortlisted candidates to submit their tenders. The screening report is transmitted by the public purchaser to the relevant Control

	<p>Commission markets in order to obtain an opinion.</p> <p>Furthermore, Article 5 of the decree N 2010-1753 dated July 19th, 2010: "The invitation to tender may be either open or restricted preceded by a pre-qualification or a call for expression of interest. The open invitation to tender consists of a public call for tender in accordance with article 4 of the decree herein. The restricted invitation to tender preceded by a prequalification or a call for expression of interest takes place in two phases:</p> <ul style="list-style-type: none"> <li>- the first phase consists in an open public call of candidature, in accordance with the regulation of prequalification in the event of invitation to tender preceded by a pre-qualification or in accordance with the file of call for expression of interest in the event of invitation to tender preceded by a call for expression of interest,</li> <li>- the second phase consists in inviting the pre-qualified candidates in the event of invitation to tender preceded by a pre-qualification or those who expressed their interest in the event of invitation to tender preceded by a call for expression of interest to present their tenders." </li></ul>
<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>None 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>Article 67 of the Public Procurement Decree No. 2014- provides that the Control Commission must submit an evaluation report containing, among other things, the presentation of questions raised by participants about the content of the tender documents as well as any clarifications made to such documents</p> <p>Decree No. 2010-1753 provides in its Article 11 that the regulation of pre-qualification will specify "the conditions and deadlines available to the candidates to ask the clarifications on the pre-qualification process". Additionally, it provides in its Article 13, that the regulation of the invitation to tender will specify in particular "the method to be followed by the tenderers to present their comments and observations concerning the projects of contractual documents of the concession and their</p>

	proposals for amendments as well as the method of notification of these proposals to the conceding party and the response of the latter".
<b>If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 6 of the Public Procurement Decree provides that, among the principles to be followed, is informing the candidates by sharing the answers and clarifications to the observations and questions submitted by other candidates, at least ten days before the expiration of the deadline to receive offers.</p> <p>Furthermore, Article 3 of the Decree No. 2010-1753 provides: "In application of the principles mentioned in article 2 of the decree herein, it is advisable to comply with the rules of nondiscrimination between the candidates, of autonomy of the conceding parties, of adoption of clear, detailed and objective procedures of all the stages of granting of the concessions, of generalization of the communication of the answers and explanations to all the candidates, as for the requested observations and clarifications".</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>	None of the projects
<b>Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	Article 23 of Decree No. 2010-1753 as modified by Decree No. 2013-4631 provides that "The licensor may use the competitive dialogue procedure in the case of a restricted tender, due to the complexity of the project, characterized by the inability of the licensor to define the technical means capable meet its requirements, or establish the legal or financial project". (and practice)

<b>If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 23 of Decree No. 2013-4631 provides that the dialogue continues until are identified the solutions susceptible to meet the needs; the conceding part informs the candidates who participated in all the phases of the negotiation about it. And the procuring authority needs to disclose the information evenly to all candidates so that none of them would have an unfair advantage towards the others by being better informed. (However, the procuring authority must keep the information it receives from the candidates confidential, and it is not allowed to disclose such information without the consent of the candidate who procured such information)</p>
<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>	<p>None of the projects</p>
<b>Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>If no, please elaborate (provide examples):</b>	<p>According to Articles 7 and 13 of Decree No. 2010-1753 The bidder is only required to submit a financial proposal. There is no provision that expressly require the bidder to submit a financial model but such condition may be required in the regulation of the invitation to tender. In fact, Article 13 provides: "The regulation of the invitation to tender specifies in particular: ..... the content of the technical and financial tenders, provisional guarantees required from the bidders and Documents which</p>

	<p>they shall present...The documents required from the bidders shall be drawn up in accordance with the models presented in the regulation of the invitation to tender and signed by the candidates who present them directly or by their duly authorized agents...". Furthermore, Article 7 of the PPP Law No. 49-2015 does requires a financial study, but does not expressly require the submission of a financial model in the bidders' proposals.</p>
<p><b>Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Article 13 of the Public Procurement Decree No. 2015-49 provides that the procuring authority should evaluate the proposals according to a predefined evaluation criteria stated in the tender documents (and it also adds specific criteria to be followed to select the best bid)</p> <p>Furthermore, Article 20 of the Decree No 2010-1753 provides that: " (...) Each special sub commission created in accordance with article 8 of the Decree herein analyzes the tenders while referring in the conditions and criteria fixed by the regulation of the invitation to tender (...)".</p>
<p><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></p>	<p>None of the projects</p>
<p><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></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>As per the public procurement decree 2014-1039 dated 13 March 2014, article 69 states that in case of obvious agreement between the bidders, the tender is cancelled and a new tender is launched. The tender may also be declared unsuccessful in case of absence of participants or offers unacceptable on the</p>

	technical or financial side. In practice, when there is only one bid, the tender is declared unsuccessful. Furthermore, Article 8 of law n°2015-49 provides the possibility to have restricted calls for tenders, this is the pre-qualification of consultation process.
<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>	No
<b>Please specify:</b>	n/a
<b>The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	No
<b>The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.</b>	Yes
<b>The regulatory framework does not include any provisions.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>In practice, what is the average number of calendar days between the initial publication of the</b>	135

<b>PPP public procurement notice and the award of the PPP? Number of calendar days:</b>	
<b>Does the procuring authority publish the award notice?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Article 16 of the PPP Law No. 2015-49 provides that the procuring authority should publish its decision to assign the PPP contract on the website of the concerned procuring authority (and an additional hardcopy publication should be made on designated boards in their respective spaces for eight days from the publication on the website).
<b>If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	Publication on the website of the minister concerned by the procurement.
<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>	<p>Article 73 of the Public Procurement Decree No. 2014-1039 provides that the results of the bidding process is disclosed to all the bidders. In fact, the procuring authority must issue and publish a public notice containing the name of the successful tenderer, the value of the contract, its purpose and the expected duration of execution.</p> <p>Furthermore, Article 17 of the Decree No. 2010-1753 provides that: "In all cases, the conceding party shall, within a deadline not exceeding two months as from the date of reception of a request for this purpose, notify in writing any tenderer who asks it during the month following the date of declaration of the result of the invitation to tender, the reasons for his tender rejection."</p>
<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 legal/regulatory provisions (if any):</b>	n/a
<b>If yes, is it published online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>Does the regulatory framework establish any exceptions where</b>	Yes

<p><b>the procurement process described above does not apply or allows for a “fast track” procedure?</b></p>	
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	<p>Article 10 of PPP Law No. 2015-49 provides for a fast track procedure in relation to National Defense, for protection of public properties in case of emergency or when only private entities can manage the project. In fact, it states that PPP contracts are concluded through direct negotiation in the following cases: (1) for national defense or public security reasons; (2) to secure the continuity of the public service in case of unpredictable events beyond the control of the public person); or (3) If the contract's object can exclusively be exploited by the patent holder.</p> <p>Furthermore, Art. 24 of the decree N 2010-1753 dated July 19th, 2010:"The concessionaire may be chosen after consultation or by way of direct negotiation in one of the following exceptional cases:</p> <ul style="list-style-type: none"> <li>- when the call for tender was declared unfruitful,</li> <li>- for reasons of national defense or public safety,</li> <li>- when there is urgency to ensure the continuity of the public utility,</li> <li>- when the performance of the subject of the contract refers to services whose performance may be entrusted only to one determined person or to an activity whose exploitation is exclusively reserved for a patent holder." <p>Art. 25 provides that: "In the case of choice of the regime of grant after consultation, the conceding party shall widen the consultation and observe the written procedure in order to guarantee the equality of the candidates, the equivalence of the chances and the transparency in the choice of the concessionaire."</p> <p>Art. 26 provides that: "Any conceding party who decides to grant a concession after consultation or by way of direct negotiation is bound to draw up a report in order to expose the reasons for choice of one of these regimes and to draw up the list of the potential participants who will be consulted or the potential participant with whom the direct negotiation will be started. The report is submitted to the unit of the concessions follow-up created by the decree n 2008-2965 referred to above in order to give its opinion."</p> <p>Art. 27 provides that: "The follow-up of the grant of the concession after consultation or by way of direct negotiation is carried out by a special sub commission created in accordance with the provisions of article 8 of the decree herein."</p> </li></ul>
<p><b>Unsolicited proposals</b></p>	<p>Score: 50</p>
<p><b>Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant</b></p>	<p>Article 11 of the law No. 49-2015 provides that any private party may submit an unsolicited proposal in the context of a partnership project, and submit a preliminary study of the project.</p>

<b>legal/regulatory provisions:</b>	
<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>	0
<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>	Article 11 of the PPP Law No. 49-2015 provides that the unsolicited proposal must present a comprehensive study that will be reviewed by the procuring authority. The latter has the discretionary authority to accept or refute the unsolicited proposal. (Note the procuring authority should use the evaluation criteria to conduct its assessment in evaluating such proposals)
<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>	Practice
<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</b>	No

<b>to ensure the consistency of PPPs with other public investment priorities.</b>	
<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>	None of the projects
<b>Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 11 al 6 of the PPP law No. 49-2015 provides that the procuring authority initiates a competitive PPP procurement procedure when proceeding with the unsolicited proposal.
<b>Does the procuring authority grant a</b>	No

<b>minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	n/a
<b>Does the procuring authority use any of the following mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer.</b>	No
<b>Developer's fee (reimbursing the original proponent for the project development cost).</b>	No
<b>Bid bonus.</b>	No
<b>Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and 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: 65
<b>Has the procuring or contract</b>	Yes

<b>management authority established a system to manage the implementation of the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any)</b>	<p>Articles 31-33 of PPP Law No. 49-2015 provide for a mechanism to control the performance of the contract: According to Article 31: PPPCo, has to report to the procuring authority... according to the PPP Contract and in response to the procuring authority's request. According to Article 32: Besides any additional monitoring duties that the PPP contract can provide for, the procuring authority is required to do the following: Follow-up to the extent of the project company's commitment; Study the documents provided by the project company; Conduct surveillance for field work to look at the progress, implementation and responsiveness to the goals of efficiency and technical conditions stipulated in the contract; Monitor their compliance with the project company and contractual conditions pertaining to handling for the benefit of national SMEs; And it must submit a report to the National Commission for the partnership between the Gaza Strip, The public and the private sector; Appoint one or more experts and an independent specialist to monitor the implementation of the contract where appropriate... Finally Article 33 provides that Partnership contracts are subject to the evaluation of Court of Accounts and control on a regular basis in addition to the control of the control of General structures of the state structures and feedback control is given to Public scrutiny and the General Authority for partnership between the public sector and the private sector...</p>
<b>If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>Participation of the members of the PPP contract management team in the PPP procurement process.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>Possibility to consult with PPP</b>	<p>Yes</p>

<b>procurement experts when managing the PPP contract.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 32 of PPP Law provides for the possibility to consult with experts during the PPP contract management phase
<b>Elaboration of a PPP implementation manual or an equivalent document.</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>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:</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>	Articles 31,32 and 33 of the PPP law No. 49-2015 provides for the establishment of a monitoring and evaluation system of the PPP contracts
<b>If yes, which of the following tools does it include (check all that apply)? PPPCo</b>	Yes

<b>must provide the procuring or contract management authority with periodic operational and financial data.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 31 al 1 of the PPP law 49-2015 provides that PPPCo should provide all the accounting and financial documents, required in the PPP contract, to the procuring authority on a regular basis. PPPCo should also submit any additional technical studies and examples and specifications that the public party might require. Additionally, Article 33 of the PPP law n°2015-49 mentions that besides the control of the administration that could be mentioned in the PPP contract, the administration must follow-up the bidder commitments and especially the activity reports mentioned in article 31 of the law, review the documents presented by the bidder, control the works on site, compliance with the provisions of the contract, appoint an expert for checking the project and present an annual report of the performance of the contract. This information is administrative information that is protected by confidentiality except for the Parliament and the Government.</p>
<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Article 31 of the PPP Law, PPPCo must submit an annual report to the procuring authority showing the progress of the completion of the project and the fulfillment of the company's obligations. Furthermore, Article 32 of the Law provides that the procuring authority must make sure it receives the annual reports from PPPCo, study them and confirm their accuracy.</p>
<b>The procuring or contract management authority must establish a risk mitigation mechanism.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The PPP contract performance information must be available to the public.</b>	<p>Yes</p>

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 33 of the PPP Law provides that the audit and evaluation reports must be published for the public in accordance with the legislation in force
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Is PPP contract performance information publicly available online?</b>	No
<b>If yes, please specify the website:</b>	n/a
<b>Does the regulatory framework expressly regulate a change in the structure (i.e. stakeholder composition) of PPPCo?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Article 21 of the PPP law No. 49-2015 requires that any change of shareholding in the project company must be approved by the regulatory authority.
<b>If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in PPPCo during an initial period (e.g. construction and first five years of operation).</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>In case of a change affecting the controlling interest, the replacing entity must meet the same technical</b>	No

<b>qualifications as the original operator.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Flexibility to substitute non-controlling interest after the initial period.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions:</b>	<p>According to Article 33 (quarter) of Decree 2010-1753 as modified by the Decree 2013-4631 "Without prejudice to the provisions of Article 21 of Law No. 2008-23 of 1 April 2008 concerning the concession regime, a substantial change in terms of a current concession contract is considered, for the purposes of this Order, as a new award of concession and require a new concession award procedure in accordance with this decree. The change is considered substantial when one of the following conditions is met: (iii) (c) the modification the scope of the contract so that it encompasses supplies, services or works not initially covered. The contract changes are not considered substantial when they were provided in the contract documents in the form of review clauses or options clear, precise and unambiguous". However, Law n°2015-49 did not include ant provision similar to article 33 of Decree 2010-1753 (as modified by the Decree 2013-4631). Consequently such article is not applicable to PPP contracts and the law mentions the possibility to include an arbitration clause in the PPP contracts, but the law does not expressly prohibit changes in a PPP contract in Tunisia.</p> <p>Our best contributor confirmed this and added that on a strict legal point of view and unless the bidder is in default, it is not possible to change the PPP contact.</p>
<b>If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope</b>	No

<b>and/or object of the contract.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>A change in the risk allocation of the contract.</b>	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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Article 17 al 2 of the PPP law No. 49-2015 provides that, as a general rule, the PPP Contract is not renewable, except in exceptional cases where an extension is needed to ensure the continuity of the public utility, or in case of force majeure, or upon the occurrence of unexpected events. In such case, the extension cannot exceed a maximum period of 3 years, and it needs the approval of the General Authority for partnerships between the public and the private sector.
<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>	Article 17 al 2 of the PPP law No. 49-2015 provides that, as a general rule, the PPP Contract is not renewable, except in exceptional cases where an extension is needed to ensure the continuity of the public utility, or in case of force majeure, or upon the occurrence of unexpected events. In such case, the extension cannot exceed a maximum period of 3 years, and it needs the approval of the General Authority for partnerships between the public and the private sector.
<b>Material Adverse government action.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	Article 17 al 2 of the PPP law No. 49-2015 provides that, as a general rule, the PPP Contract is not renewable, except in exceptional cases where an extension is needed to ensure the continuity of the public utility, or in case of force majeure, or upon the occurrence of unexpected events. In such case, the extension cannot exceed a maximum period of 3 years, and it needs the approval of the General Authority for partnerships between the public and the private sector. In fact, Article 282 of the Tunisian Civil Code (code des obligations et des contrats)

	defines force majeure as “any fact that a human being cannot prevent such as natural phenomena, enemy invasion, Acts of Government and making impossible the performance of the obligation. Consequently, force majeure includes an adverse government action.
<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>	Article 30 of the PPP law No. 49-2015 requires the parties, in the case of a dispute resulting from the implementation of the PPP contract, to recourse to an amicable period for settlement where conciliatory efforts should be made before resorting to the judiciary or to arbitration. If the parties end up choosing the arbitration path, the contract has to state that the mandatory applicable law is the Tunisian law.
<b>If yes, which of the following options best describes the dispute resolution mechanism for PPPs? (Please select only one). The regulatory framework details specific resolution mechanisms for disputes arising during the implementation of the PPP.</b>	No

<b>If yes, please specify:</b>	n/a
<b>The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.</b>	Yes
<b>The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Does the regulatory framework allow for the lenders to take control of the PPP project (lender step-in right) if either PPPCo defaults or if the PPP contract is under threat of termination for failure to meet service obligations?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	According to Article 36 of the PPP law No. 49-2015, PPPCo would lose its right to the contract in case it defaults on its obligations and fails to fulfill them by the expiration of the notice period given by the public authority. In such case, the lenders are advised and they can propose a replacement to PPPCo, which would need the approval of the procuring authority.
<b>If yes, which of the following options best describes the lender step-in right? (Please select only one). The regulatory framework expressly regulates the lender step-in rights.</b>	Yes

<b>If yes, please specify:</b>	The lenders have the right to step in, in case PPPCo fails to fulfill its obligations under the contract, to propose another person to replace PPPCo., (which will need the approval of the procuring authority)
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	No
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	No
<b>Other</b>	No
<b>please specify:</b>	n/a
<b>Does the regulatory framework expressly establish the grounds for termination of a PPP contract?</b>	Yes
<b>If yes, please specify:</b>	The PPP contract may be terminated by the will of parties before its term for various reasons: *the negligence of either contracting party; * the repurchase of the concession by the conceding party after expiry of a period determined in the contract. The principles effects of the PPP contract termination is meanly the return to the conceding part of the properties used by the concessionaire during the PPP execution.
<b>and provide the relevant legal/regulatory provisions:</b>	PPP Law No. 2015-49 provides: (1) in its Article 34, that the PPP contract is normally terminated by the end of the contract life. However, exceptionally, the contract can be terminated prematurely in circumstances provided for in Article 35: the PPP contract can be terminated by mutual agreement or for circumstances agreed upon in the contract. The procuring authority can unilaterally decide to terminate the contract if the private party committed a serious mistake, or if the public interest requires termination of the contract.
<b>If yes, does the regulatory framework also establish the consequences for the termination of the PPP contract?</b>	No
<b>If yes, please provide the relevant</b>	n/a

<b>legal/regulatory provisions:</b>	
<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>	Decree complementing the new PPP Law No. 2015-49, by organizing the commissions and the main conditions of the PPP contract. Such Decree of application is being prepared, and is expected to be adopted by June 1, 2016.
<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