



PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN AUSTRALIA

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The focus of this analysis shall be on the Australian state of New South Wales (NSW). Australia does not have a specific legislative framework which regulates PPP procurement. In 2008, however, Infrastructure Australia developed the National PPP Policy and Guidelines (as updated in October 2015) [hereinafter the “National PPP Guidelines”]. These documents have been prepared and endorsed by Infrastructure Australia and the State, Territory, and Commonwealth governments, as an agreed framework for the delivery of PPP projects. All Australian, State and Territory Government agencies now apply the National PPP Guidelines to all PPP projects released to the market. The PPP Guidelines aim to provide a consistent framework that enables public and private sectors to work together to improve public service delivery through private sector provision of public infrastructure and related services. Section 3.1 of the National PPP Policy Framework of these Guidelines provides, “The Policy requires jurisdictions to apply the National PPP Guidelines to the procurement of PPP projects, which are defined as being where the private sector provides public infrastructure and any related services; and there is private investment or financing.” And Section 1.1 of the National PPP Guidelines Overview provides, “These Guidelines set a framework for the procurement of PPPs on a national basis and apply across State, Territory, and Commonwealth arrangements”. Additionally, most individual state and territory governments have their own jurisdictional requirements and guidelines for PPPs. These state and territory guidelines are almost identical across each Australian state and territory and are read in conjunction with the National PPP Guidelines. In terms of NSW precisely, Infrastructure NSW Act 23/2011 established Infrastructure NSW, a governmental entity that oversees PPP projects in NSW. Furthermore, the Infrastructure Financing Unit of the NSW Treasury is the first point of contact for PPPs in NSW, and released the NSW-specific requirements for PPPs in the NSW Public Private Partnerships Guidelines in 2012, last approved revision in 2017 by (TPP17-07) [hereinafter “NSW PPP Guidelines”]. And according to Section 2 the NSW PPP Guidelines, “These Guidelines are designed to provide Government agencies, the private sector, advisors and other stakeholders a streamlined guide on the NSW specific requirements for PPP preparation, procurement and management and aim to complement the National Guidelines.” Additionally, Section 1 of the NSW PPP Guidelines provides, “all NSW Government agencies, other than State Owned Corporations (SOC), are also subject to the NSW Government Procurement Policy Framework and the associated Strategic Directions and Procurement Board Directions.” The previously mentioned instruments shall form the regulatory framework on PPPs in NSW, Australia for purposes of this analysis.</p>
and provide a link to a government–	http://infrastructureaustralia.gov.au/policy-publications/public-private-partnerships/national-ppp-policy-guidelines.aspx

supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0015/22605/NSW_PPP_Guidelines_2012_Final_Version_14_August_2012_dnd.pdf
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	<p>No</p>
Please describe:	<p>n/a</p>
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	<p>Yes</p>
Please describe:	<p>The NSW Government has approved the 2017 revised NSW PPP Guidelines (TPP17-07) (http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0015/22605/NSW_PPP_Guidelines_2012_Final_Version_14_August_2012_dnd.pdf). The NSW Guidelines are designed to provide Government agencies, the private sector, advisors and other stakeholders a streamlined guide on the NSW specific policy and approval requirements for PPP procurement. These guidelines complement the detailed National PPP Guidelines.</p>
3.1 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.	<p>No</p>

If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4 Besides national defense and other matters of national security, does the regulatory framework	No

explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes
If yes, please specify and provide the relevant legal/regulatory provision (if any):	<p>The Australian Taxation Office has released a 'Federal Tax Framework' as guidance on how the Australian tax system applies to PPPs: (https://www.ato.gov.au/Business/Large-business/In-detail/Key-products-and-resources/Infrastructure---Australian-federal-tax-framework/) This includes guidance on:</p> <ul style="list-style-type: none"> -The income tax treatment of the social PPP (Examples of the type of infrastructure that may be subject to this arrangement include schools, hospitals, prisons, roads and public utilities). -A variation on the social PPP structure where the government provides a contribution to the PPP and the tax implications. -A further variation involving a 'progressive securitization' social PPP, and its tax implications. -The GST treatment of the social PPP.

5. Please identify the PPP procuring authorities in Australia and provide their website(s) (if available):	<p>The different government ministries and agencies act as procuring authorities within the scope of their authority. A highway project in NSW would be procured by the Roads & Maritime Services (http://www.rms.nsw.gov.au/)</p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	<p>Yes</p>
If yes, please indicate its name, and its website (if available):	<p>Infrastructure NSW (http://www.infrastructure.nsw.gov.au/)</p>
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	<p>Yes</p>
6.2 PPP capacity building for other public authorities.	<p>Yes</p>
6.3 PPP promotion among the public and/or private sectors in national and international forums.	<p>Yes</p>
6.4 Technical support in implementing PPP projects.	<p>Yes</p>
6.5 Identification and selection of PPP projects from the pipeline.	<p>No</p>
6.6 Revision of fiscal risks born	<p>No</p>

by the Government.	
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	No
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	No
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>Infrastructure NSW Act in Section 11 provides, “General and specific functions of Infrastructure NSW (1) Infrastructure NSW has the following functions: (a) to prepare and submit to the Premier a 20-year State infrastructure strategy, (b) to prepare and submit to the Premier 5-year infrastructure plans and other plans requested by the Premier, (c) to prepare and submit to the Premier sectoral State infrastructure strategy statements, (d) to prepare project implementation plans for major infrastructure projects, (e) to review and evaluate proposed major infrastructure projects by government agencies or the private sector and other proposed infrastructure projects (including recommendations for the role of Infrastructure NSW in the delivery of those projects), (f) to oversee and monitor the delivery of major infrastructure projects and other infrastructure projects identified in plans adopted by the Premier, (g) to carry out or be responsible for the delivery of a specified major infrastructure project in accordance with an order of the Premier under Part 5, (h) to assess the risks involved in planning, funding, delivering and maintaining infrastructure, and the management of those risks, (i) to provide advice to the Premier on economic or regulatory impediments to the efficient delivery of specific infrastructure projects or infrastructure projects in specific sectors, (j) to provide advice to the Premier on appropriate funding models for infrastructure, (k) to co-ordinate the infrastructure funding submissions of the State and its agencies to the Commonwealth Government and to other bodies, (l) to carry out reviews of completed infrastructure projects at the request of the Premier, (m) to provide advice on any matter relating to infrastructure that the Premier requests. (2) Infrastructure NSW is to exercise its functions with a view to achieving the objects of this Act. (3) Infrastructure NSW may exercise any other function delegated to it by another government agency. (4) Infrastructure NSW has such other functions as are conferred or imposed on it by or under this or any other Act.”</p>
PPP Preparation	

8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>In NSW, as noted in Section 3.3 of the NSW PPP Guidelines, prior to procuring a PPP project, the Cabinet must obtain budget funding approval for the project. As well as Cabinet budgetary approval, the Treasurer’s approval is required under Section 5A of the Public Authorities (Financial Arrangements) Act 1987 (PAFA Act) to enter into a joint financing arrangement on recommendation of the responsible Minister. Approval under the State Owned Corporations Act 1989 (SOC Act) may also be required to obtain approval of the Shareholding Ministers under Section 20X of the Act which deals with the acquisition and disposal of fixed assets and investments (Sections 3.4 & 3.5 of the NSW PPP Guidelines).</p>
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 3.1 of the NSW PPP Guidelines, “Government approval will be required at various project milestones throughout the PPP procurement process.” Contributors have confirmed that the Treasurer’s approval is included in such governmental approval.</p>
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 4.1.5 of the NSW PPP Guidelines provides, “Agencies must prepare a statement of accounting treatment to assess the balance sheet, income statement and cash flow impacts of a PPP project. This statement should also include the estimated full contingent exposure to Government, including:</p> <ul style="list-style-type: none"> • the termination liability, in the case of private party default or voluntary termination; and • the sum of any individual actual or contingent liabilities under specific clauses of the

	<p>project delivery contract, combined with the probability of each outcome. Agencies should refer to the relevant accounting standards and Treasury’s Accounting Policy for Privately Financed Projects. Where reliance is placed on professional accounting opinions, copies of these should be attached to the statement.</p> <p>The Budget and Financial Management Directorate of NSW Treasury is responsible for accounting policy guidelines. Agencies should consult with Treasury to agree on the most appropriate accounting treatment for each individual PPP transaction.”</p> <p>NSW Treasury Policy & Guidelines Paper: ‘Budgeting for Availability based Public Private Partnerships’ (2015) (TPP 15-02) [Hereinafter “NSW Budgeting Policy”](http://arp.nsw.gov.au/sites/default/files/TPP15-02_Budgeting_for_Availability_based_Public_Private_Partnerships.pdf), provides, “All General Government agencies and PTEs (Relevant Entities) that are in the process of procuring or bound by an Availability PPP contract are required to comply with this policy.”</p>
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Accounting Treatment is set out in the relevant accounting standards in the NSW Treasury’s Accounting Policy for Privately Financed Projects (TPP 06-8) (June 2006): (https://www.treasury.nsw.gov.au/sites/default/files/pdf/TPP06-8_Accounting_Policy_-_Accounting_for_Privately_Financed_Projects.pdf) [hereinafter “NSW Accounting Policy”]; Treasury Document: https://www.treasury.nsw.gov.au/sites/default/files/pdf/TC15-16_Managing_Public_Private_Partnership_%28PPP%29_Contracts.pdf , which has been issued according to Section 1.1, to provide guidance for NSW Public Sector entities in accounting for privately financed projects. Section 4.1.5 of the NSW PPP Guidelines furthermore provides, “Agencies must prepare a statement of accounting treatment to assess the balance sheet, income statement and cash flow impacts of a PPP project. This statement should also include the estimated full contingent exposure to Government, including:</p> <ul style="list-style-type: none"> • the termination liability, in the case of private party default or voluntary termination; and • the sum of any individual actual or contingent liabilities under specific clauses of the project delivery contract, combined with the probability of each outcome.
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>NSW Budgeting Policy provides for various reporting requirements, divided into stages corresponding with the stages of the project, from procurement to contract end. In addition, the Policy provides that “Relevant Entities are required to submit PPP Data Tables in accordance with the budget process timeline. The PPP Data Tables provide information on the anticipated future liabilities of the Relevant Entities in relation to a specific Availability PPP.” (p. 6).</p>
8.3. If yes to question 8.2, which of the following	<p>No</p>

alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	
Accounting and reporting according to other international standard (e.g. European System of Accounts).	No
Please specify:	n/a
Other.	Yes
Please specify:	Accounting and reporting, according to the current Framework of the Australian Accounting Standards Board (AASB). (http://www.aasb.gov.au/Pronouncements/Conceptual-framework.aspx)
9. 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 (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	Yes
If yes, please specify the relevant authority	The Cabinet and NSW Minister for Planning and Infrastructure
and provide the relevant legal/regulatory	In terms of Cabinet approval, according to Section 3.1 of the NSW PPP Guidelines, "The Cabinet approval process for funding public infrastructure projects and for PPP delivery of that public infrastructure and related services is detailed in section 3.2. Generally, a

provisions (if any):	<p>Cabinet sub-committee with specific mandates (as outlined in sections 3.2 and 3.3) provides approval at the various milestones. However, Cabinet has discretion over whether a full Cabinet approval is required for a particularly significant PPP transaction milestone(s).” And according to Section 4.2 of the National PPP Guidelines Policy Framework document, governments are required to commit to investing in a particular programme or project as a strategic priority prior to its development as a PPP arrangement. This is to ensure that the prioritisation of public sector projects is not distorted by the availability of private sector finance (Section 4.2 of the National PPP Guidelines).</p> <p>According to Section 3.7 of the NSW PPP Guidelines under “Environmental and Planning Approvals”, environmental and development approval requirements are separate from financial and budgetary approval requirements outlined in sections 3.1 to 3.6. Risks associated with gaining development approvals should be appropriately considered at the outset and updated as required.</p> <p>Under the Environmental Planning & Assessment Act 1979 (EP&A Act), the Minister for Planning and Infrastructure provides consent for all State Significant Developments or Infrastructure under Parts 4 and 5.1, respectively. Generally, PPPs are either State Significant Developments or Infrastructure based on project scope and capital investment value.”</p>
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Cabinet approves PPPs for the “investment decision” prior to the procurement process, “procurement decision,” (NSW PPP Guidelines Section 3.2), and approval “during the procurement process” at certain stages NSW PPP Guidelines Section 3.3).</p>
10. Does the procuring authority use transaction advisors during the PPP project cycle?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory	<p>Section 4.1.2 of the NSW PPP Guidelines provides, consistent with the National Guidelines all PPP projects should be managed by a project director, Project Steering Committee and dedicated project team. The project team members should include financial, technical,</p>

<p>provisions (if any):</p>	<p>operational and legal skills to reflect the breadth of skills brought to the project by a private sector consortium and should have clear lines of accountability and quality of resources applied to the project team. Figure 4.1 outlines a typical project management structure.</p> <p>In NSW, the composition of the Steering Committee will include the procuring agency, an experienced officer from NSW Treasury and any representatives from other agencies or independent advisers as jointly approved by Treasury and the procuring agency or by Cabinet.” Figure 4.1 of this Section confirms that such expertise could come from external advisors.</p> <p>National PPP Guidelines in Section 3 also embody provisions for the inclusion of consultants for tasks such as the design and construction outline of projects to be procured.</p>
<p>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	<p>Yes</p>

If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>According to Section 4.2 of the National PPP Guidelines Policy Framework document, governments are required to commit to investing in a particular programme or project as a strategic priority prior to its development as a PPP arrangement. This is to ensure that the prioritisation of public sector projects is not distorted by the availability of private sector finance (Section 4.2 of the National PPP Guidelines). Additionally, the general project prioritisation scheme in Australia is more state-oriented, with each jurisdiction making assessments with respect to infrastructure priorities in its own jurisdiction. However, Infrastructure Australia maintains and periodically updates the 'Infrastructure Priority List' for nationally significant infrastructure:</p> <p>http://infrastructureaustralia.gov.au/projects/infrastructure-priority-list.aspx</p> <p>Moreover, Section 2.1 of the National PPP Guidelines provides, "The objectives of the National PPP Policy Framework are to: encourage private sector investment in public infrastructure and related services where value for money for government can be clearly demonstrated."</p>
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	<p>No</p>
If yes, please elaborate:	<p>n/a</p>
The procuring authority does not evaluate PPPs against existing	<p>No</p>

government priorities.	
Please elaborate and provide examples:	n/a
11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?	Yes
If yes, please specify:	The NSW Cabinet also makes infrastructure prioritization decisions in response to Infrastructure NSW's State Infrastructure Strategy, https://www.nsw.gov.au/improving-nsw/projects-and-initiatives/state-infrastructure-strategy/
If no, please elaborate:	n/a
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	Yes
Relevant legal/regulatory provision (if any)	Sections 3.1.2 of Volume 1 of the National PPP Guidelines on "Procurement Options Analysis" and "public interest" and Volume 4 on "Public Sector Comparator Guidance", and Sections 4.3.3 of the NSW PPP Guidelines discuss the socio-economic assessments in the context of the Public Sector Comparator, and addresses social and economic infrastructure in this context. Additionally, Appendix 1 of the NSW PPP Guidelines sets out the Public Interest Evaluation, which contains a set of criteria against which a proposed PPP should be evaluated.
Is there a specific methodology for the assessment?	Yes

If yes, please elaborate	Sections 3.1.2 of Volume 1 of the National PPP Guidelines on “Procurement Options Analysis” and 4.3.3 of the NSW PPP Guidelines discuss the socio-economic assessments in the context of the Public Sector Comparator, and addresses social and economic infrastructure in this context. Agencies are required to undertake appropriate cost-benefit analysis amongst other components in accordance with the NSW Treasury Guidelines.
Is the assessment done in practice?	Yes
Details:	A business case study and further Public Sector Comparator is developed for each individual proposed project. The NSW Government also considers providing a summary of a PSC in tender documents where it will assist the private sector’s bid preparation process and result in higher quality and better value bids to the Government.
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	Section 4.3.3 of the NSW PPP Guidelines provide, “To maintain its usefulness as a tool, the PSC will be accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement”. And according to Section 3.1.1 of the National PPP Guidelines, the key value for money drivers for PPP delivery include: whole-of-life costing, full integration, under the responsibility of one party, of up-front design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs. This delivers improved efficiency through whole-of-life costing as design and construction become fully integrated up-front with operations and asset management.” Section 13.2 of Volume 2 of the National PPP Guidelines on “Practitioners’ Guide” also details such evaluation.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	It’s a standard to achieve value for money.
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Section 4.3.3 of the NSW PPP Guidelines covers risk assessment and provides, “To maintain its usefulness as a tool, the PSC will be accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement.” And according to Section 3.1.1 of the National PPP Guidelines, the key value for money drivers

	for PPP delivery include: whole-of-life costing, full integration, under the responsibility of one party, of up-front design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs. This delivers improved efficiency through whole-of-life costing as design and construction become fully integrated up-front with operations and asset management.” Section 11 of Volume 2 of the National PPP Guidelines “Practitioners’ Guide” entitled “risk allocation”, details such analysis.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Section 3 of Volume 1 of the National PPP Guidelines sets out risk assessment components within the value for money assessment and PPP model delivery. Section 11 of Volume 2 of the National PPP Guidelines provides a high-level overview of the key risk allocation issues and commercial principles involved in a PPP project, and how such risks are able to be managed.
Is the assessment done in practice?	Yes
Details:	This is standard application to better prepare PPP projects for procurement and later implementation.
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	Yes
Relevant legal/regulatory provision (if any)	Section 4.3.3 of the NSW PPP Guidelines provides, “To maintain its usefulness as a tool, the PSC (Public Sector Comparator) will be accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement.” This is further detailed in Volume 4 of the National PPP Guidelines on “Public Sector Comparator Guidance”.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Sections 2 & 3 of Volume 1 of the National PPP Guidelines sets out components for value for money assessments and the PPP model delivery.
Is the assessment done in practice?	Yes
Details:	The Public Sector Comparator is a tool that the government uses when determining value for money, and accordingly, it is prepared carefully and comprehensively for each potential PPP.
12.5. Financial viability or	Yes

bankability assessment	
Relevant legal/regulatory provision (if any)	The NSW PPP Guidelines (Section 1.1) are based on the principle: “ensure stability of PPP delivery structures, with sustainable debt financing and robust commercial and financial structures;” Under these Guidelines, PPP procurement is to be considered as a procurement option for any capital project greater than \$100 million (Section 1.1). Furthermore, Section 3 of Volume 4 of the National PPP Guidelines on Public Sector Comparator Guidance provides components for such assessment.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	This is standard application to better prepare PPP projects for procurement and later implementation.
12.6. Market sounding and/or assessment (showing evidence of investors’ interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	<p>According to Section 4.3.1 of the National PPP Guidelines, “analysis of market capability and appetite”, Government requires reliable data on which to base a decision on whether to offer a project to the market as a PPP project, or to deliver it by traditional means. This decision, which is based on practical grounds, needs to examine the issues of:</p> <ol style="list-style-type: none"> 1) whether private parties have the capability to deliver the project and related services; and 2) whether private parties have the appetite, or motivation to do so, which may depend on the prevailing market conditions.” <p>Section 16.2 of Volume 2 of the National PPP Guidelines under “Market communication” also provides, “The communication strategy should include specific processes to ensure bidders are properly briefed as the project progresses”. Information outside the tender documentation needs to be communicated to bidders in a timely manner. The more controversial or high-profile the project is, the more important these processes become. Communication occurs either directly or indirectly with the broader infrastructure market. The market is particularly interested in the efficiency of processes, their predictability, probity and the like. It is important that communication about a project is consistent with the actions of the procurement team. For example, if the project is to include broad consultation with interested parties, interaction should be visible and any outcome must be properly considered in developing the project.”</p> <p>Section 4.3.3 of the NSW PPP Guidelines also provides a basis where, “the PSC (Public Sector Comparator) will be accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement.”</p>

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	This is standard application to better prepare PPP projects for procurement and later implementation.
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	<p>Section 3.7 of the NSW PPP Guidelines provides, “Environmental and development approval requirements are separated from financial and budgetary approval requirements outlined in sections 3.1 to 3.6”. Risks associated with gaining development approvals should be appropriately considered at the outset and updated as required. In all cases, an appropriate level of environmental assessment and community consultation must be undertaken as part of the assessment process. Final environmental and planning approval will not occur until full details of the project to be actually delivered are known.” Section 3.4.2 of the National PPP Guidelines provides, “Requirements relating to planning and environmental approvals can have a significant impact on project deliverability”. As a general principle, government will undertake to obtain planning and environmental approvals where they are fundamental to the use of the site for the project.</p> <p>Given the significant time often associated with obtaining these approvals and the importance of this information to the development of RFP documentation, this work should be undertaken early in the project.</p> <p>Further information on how planning and environmental approval risks are allocated can be found in the National Commercial Principles for Social Infrastructure. And Section 4 of the National PPP Guidelines “Commercial Principles for Social Infrastructure” discusses details about environmental impact assessments and approvals, which is reiterated in Volume 7 of these Guidelines (Section 4).</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Section 4 of the National PPP Guidelines “Commercial Principles for Social Infrastructure” discusses details about environmental impact assessments and approvals, which is reiterated in Volume 7 of these Guidelines (Section 4). And the NSW Environmental and Planning Approval (EPA) process under the Environmental Planning & Assessment Act 1979 (EPA Act) (Act 203 of 1979) (Parts 4 and 5 particularly) also provides such methodology.
Is the assessment done in practice?	Yes
Details:	While these processes may be extensive, time-consuming, and costly, however they are fundamental to and are a pre-requisite for the ability of the site to be used for the project.
12.8. Consultation process with affected	Yes

communities on potential impact of the PPP project	
Relevant legal/regulatory provision (if any)	<p>Item 3 of Appendix 1 of the NSW PPP Guidelines under “Public Interest Evaluation: Community Consultation” includes,</p> <ol style="list-style-type: none"> 1) Identify individuals/groups (e.g. employees, unions, community groups and local councils) likely to be affected by the project. 2) Assess the likely impact of the project on those individuals likely to be affected by the project, including the likely social, economic, employment and environmental issues which may arise. 3) Develop a community consultation process which: <ul style="list-style-type: none"> - ensures participation by the affected individuals/groups during the EOI and short-listing process - in the case of large, complex or controversial projects, ensures the participation of the affected individuals/groups after contract - signing, during construction and during the commissioning of the project; and - complies with the legal requirements and broader Government policy standards. 4) How have issues raised by the community as part of any community consultation processes been addressed or how will they be addressed. <p>Section 16.2.1 of Volume 2 of the National PPP Guidelines provides, “Public consultation varies from project to project. In selecting the appropriate public consultation strategy, the procurement team should consider the size, complexity and sensitivity of the project. For small and non-controversial projects, consultation may need as little as ensuring notices appear in the local press. Other projects require a more elaborate process including regular press releases on project topics, public forums and calling for and considering public submissions.”</p>
Is there a specific methodology for the assessment?	<p>Yes</p>
If yes, please elaborate	<p>Item 3 of Appendix 1 of the NSW PPP Guidelines on “Public Interest Evaluation: Community Consultation” provides components of such consultation, as previously mentioned.</p>
Is the assessment done in practice?	<p>Yes</p>
Details:	<p>This is standard application to better prepare PPP projects for procurement and later implementation.</p>
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information	<p>Yes</p>

Memorandum to the bidders)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 4.3.3 of the NSW PPP Guidelines provides, “The NSW Government will consider providing a summary of a PSC in tender documents where it will assist the private sector’s bid preparation process and result in higher quality and better value bids to the Government. The results of the PSC will be made publicly available in the contract summary.”</p> <p>Section 5.2.1 of Volume 2 of the National PPP Guidelines provides, “The efficiency of the process can be enhanced by making available to short-listed bidders all relevant information the Procuring Agency has that may aid in the preparation of a response to the RFP. Such information, including any analysis of legislative and regulatory impacts, feasibility studies, land use considerations, geological information, demand estimates and the like, should be made available, with appropriate disclaimers, in a data room.”</p>
and specify which of the assessments are included in the request for proposals and/or tender documents:	All the aforementioned assessments.
13.1. Are the assessments published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 4.3.3 of the NSW PPP Guidelines provides, “The NSW Government will consider providing a summary of a PSC in tender documents where it will assist the private sector’s bid preparation process and result in higher quality and better value bids to the Government. The results of the PSC will be made publicly available in the contract summary.”
specify the website	On the relevant procuring authority’s website, including: http://www.rms.nsw.gov.au/
please specify which of the assessments are published online:	All aforementioned assessments depending on the project
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 4.5.1 of the NSW PPP Guidelines provides, “for contract management must be incorporated into the RFP and the draft contract provided to bidders, then maintained through further development and finalisation of the contract.” Furthermore, in the “RFP Development Phase” under Section 5.1 of Volume 2 of the National PPP Guidelines, “The issue of the contract as part of, and concurrently with the RFP, ensures that all parties are aware of the specific contractual terms that government is seeking and have enough opportunity to raise any issues of concern. It also limits, where relevant, subsequent negotiations to clearly identified and fully drafted departures.” The draft contract is thus a

	major component of the request for proposals. Ministerial Memorandum No. 2007-01 Public Disclosure of Information Arising from NSW Government Tenders and Contracts (M2007-01) also provides such disclosure information.
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 5.2 of the NSW PPP Guidelines: “All agencies, other than SOCs, are required to make Request for Tender documents publicly available and tenders must be able to be lodged through the NSW Government eTendering system”.</p> <p>Additionally, Ministerial Memorandum No. 2007-01 on Public Disclosure of Information Arising from NSW Government Tenders and Contracts (M2007-01) provides that “tender information shall remain posted on the website until the tender call process has been concluded and a contract either awarded or decision made not to award any contract [and] contract information shall remain posted ... for at least 30 days or until all work or services under the contract are completed”.</p>
and please specify the website:	<p>Link to Ministerial Memorandum No. 2007-01: http://arp.nsw.gov.au/m2007-01-public-disclosure-information-arising-nsw-government-tenders-and-contracts</p> <p>Link to Government Tenders website: https://tenders.nsw.gov.au/</p>
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	Standard transaction documents have been developed in NSW (which can be amended as required for specific projects), however they have not been made available on a website.
16.1 In a case comparable to the case study assumptions,	Yes

who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Section 6 of the National PPP Guidelines Volume 7 provides,</p> <p>6.1 Subject to any approval or other determination under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Cth) obtained by government for the project, the private party is responsible for obtaining all relevant Commonwealth approvals and bears the risk of delay occasioned by legal challenges to the approvals.</p> <p>6.2 State and Territory planning approvals</p> <p>(a) All jurisdictions have their own planning legislation as well as other planning policies and instruments. Jurisdictions will accept different obligations and risks based on the particular planning regimes applicable in their jurisdiction and depending on the unique circumstances of each project.</p> <p>(b) Notwithstanding paragraph (a), where the use of the land for the project is not already permitted by the relevant scheme, government may consider assuming the risk of the scheme being amended so the proposed land use will be permitted.</p> <p>6.3 Other site approvals</p> <p>(a) Other site-based approvals such as licenses, permits and other consents under various legislation are the responsibility of the private party.</p> <p>(b) Similarly, obtaining any necessary industry accreditation is the responsibility of the private party.</p> <p>6.4 Compliance</p> <p>The private party must, at its own cost, comply with the requirements of all approvals. Contributors confirm that the relevant government entity would be responsible for obtaining urban permits on this basis.</p>
16.2. Obtaining the required environmental	No

permits: Procuring authority (or other Government entity)	
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Section 4.1.2 of the National PPP Guidelines Volume 7 provides under “ Commonwealth assessments”:</p> <p>(a) If the nature or location of the site raises the prospect that the project may impact on matters of national environmental significance under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) , government may refer the project to the relevant Minister for determining whether it is a controlled action and, if so, submit the project for assessment under that Act.</p> <p>(b) Any further assessment that may be required under that Act as a result of the private party’s design solution must be obtained by the private party.”</p> <p>Section 4.1.4 of the National PPP Guidelines provides under “Other environmental approvals”, “The private party bears the risk of obtaining all other environmental approvals required by the bid design.”</p> <p>Additionally environmental and planning assessment process is an ongoing procedure. According to Section 3.7.3 of the NSW PPP Guidelines, “an appropriate level of environmental assessment and community consultation must be undertaken as part of the assessment process. Final environmental and planning approval will not occur until full details of the project to be actually delivered are known.”</p>
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or	Yes

other Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Section 6 of the National PPP Guidelines Volume 7 provides,</p> <p>6.1 Subject to any approval or other determination under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Cth) obtained by government for the project, the private party is responsible for obtaining all relevant Commonwealth approvals and bears the risk of delay occasioned by legal challenges to the approvals.</p> <p>6.2 State and Territory planning approvals</p> <p>(a) All jurisdictions have their own planning legislation as well as other planning policies and instruments. Jurisdictions will accept different obligations and risks based on the particular planning regimes applicable in their jurisdiction and depending on the unique circumstances of each project.</p> <p>(b) Notwithstanding paragraph (a), where the use of the land for the project is not already permitted by the relevant scheme, government may consider assuming the risk of the scheme being amended so the proposed land use will be permitted.</p> <p>6.3 Other site approvals</p> <p>(a) Other site-based approvals such as licenses, permits and other consents under various legislation are the responsibility of the private party.</p> <p>(b) Similarly, obtaining any necessary industry accreditation is the responsibility of the private party.</p> <p>6.4 Compliance</p> <p>The private party must, at its own cost, comply with the requirements of all approvals.</p>
16.4. Obtaining the required land: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Section 8 of the National PPP Guidelines Volume 7 Provides,</p> <p>8.1 Ownership</p> <p>(a) Subject to 8.1(b), government will generally be responsible for delivery of the site for the purposes of the project and will bear the costs and risks of delivery of the land that is agreed at Financial Close to be required for the Project.</p> <p>(b) The private party bears the costs and risks of acquiring any land additional to the land</p>

	<p>agreed at financial close.</p> <p>(c) Accordingly, for most projects, land will be in government ownership. This facilitates the transfer of control of the facility to government at the end of the contract term and underpins government's step-in rights under the project agreement.</p> <p>8.2 Construction license</p> <p>8.2.1 Grant of license</p> <p>Government will grant to the private party a non-exclusive license or licenses to use, and permit any construction sub-contractor or operating sub-contractor to use, the site during the construction period on the following terms and subject to government's rights of access.</p> <p>8.3 Lease during operating term</p> <p>8.3.1 Grant of lease</p> <p>(a) Where the private party can demonstrate it is more appropriate given the project structure and it represents better value for money for government to grant a lease during the operating term, as opposed to a license, then government may choose to grant a lease from the completion of the works to the private party. Unless otherwise specified the lease will be limited to use of the land solely in the purpose of undertaking the project activities in accordance with the project agreement.</p> <p>(b) Any lease will be subject to reservations enabling government to access and use the facility to exercise its rights under the project agreement and for any other lawful purpose.</p> <p>8.4 Other licenses or sub-leases</p> <p>8.4.1 License during operating term</p> <p>Government will grant a license during the operating term for land required by the private party to carry out the project activities and which is not the subject of a lease described in section</p> <p>8.4.2 Private party license or sub-leases</p> <p>The private party may be granted power during the operating term to grant sub-leases and licenses over areas leased or sub-leased to it, where the grant of the sub-lease or license is expressly contemplated in the private party's obligations under the project agreement. The terms of any sub-lease or license may be subject to government approval.</p>
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	<p>Yes</p>
Private Partner	<p>No</p>
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	<p>No</p>
To be established in the contract	<p>No</p>

Relevant legal/regulatory provision (if any)	<p>Section 8 of the National PPP Guidelines Volume 7 Provides,</p> <p>8.1 Ownership</p> <p>(a) Subject to 8.1(b), government will generally be responsible for delivery of the site for the purposes of the project and will bear the costs and risks of delivery of the land that is agreed at Financial Close to be required for the Project.</p> <p>(b) The private party bears the costs and risks of acquiring any land additional to the land agreed at financial close.</p> <p>(c) Accordingly, for most projects, land will be in government ownership. This facilitates the transfer of control of the facility to government at the end of the contract term and underpins government's step-in rights under the project agreement.</p> <p>8.2 Construction license</p> <p>8.2.1 Grant of license</p> <p>Government will grant to the private party a non-exclusive license or licenses to use, and permit any construction sub-contractor or operating sub-contractor to use, the site during the construction period on the following terms and subject to government's rights of access.</p> <p>8.3 Lease during operating term</p> <p>8.3.1 Grant of lease</p> <p>(a) Where the private party can demonstrate it is more appropriate given the project structure and it represents better value for money for government to grant a lease during the operating term, as opposed to a license, then government may choose to grant a lease from the completion of the works to the private party. Unless otherwise specified the lease will be limited to use of the land solely in the purpose of undertaking the project activities in accordance with the project agreement.</p> <p>(b) Any lease will be subject to reservations enabling government to access and use the facility to exercise its rights under the project agreement and for any other lawful purpose.</p> <p>8.4 Other licenses or sub-leases</p> <p>8.4.1 License during operating term</p> <p>Government will grant a license during the operating term for land required by the private party to carry out the project activities and which is not the subject of a lease described in section</p> <p>8.4.2 Private party license or sub-leases</p> <p>The private party may be granted power during the operating term to grant sub-leases and licenses over areas leased or sub-leased to it, where the grant of the sub-lease or license is expressly contemplated in the private party's obligations under the project agreement. The terms of any sub-lease or license may be subject to government approval.</p>
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of	<p>No</p>

<p>the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.</p>	
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The bid evaluation committee members require sufficient qualification without specific details.</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	NSW PPP Guidelines provide in Section 4.1.2 that the composition of the Steering Committee is to include the procuring agency, an experienced officer from NSW Treasury and any representatives from other agencies or independent advisers as jointly approved by Treasury and the procuring agency or by Cabinet.
<p>The bid evaluation committee members are not required to have any specific qualifications.</p>	No
<p>Please elaborate and provide examples:</p>	n/a
<p>19. Does the procuring authority issue a public procurement notice of the PPP project?</p>	Yes
<p>If yes, please specify the means of publication and provide the relevant legal/regulatory</p>	The National PPP Guidelines in Section 3.5 of Volume 2 provide that the private sector should be notified about the PPP and there should be engagement with the private sector.

provisions (if any):	
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	The notice is published in the relevant procuring authority's website, including: http://www.rms.nsw.gov.au/
20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
and the time in calendar days:	n/a
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects?	Yes

Open tendering: Available	
Default	No
Relevant legal/regulatory provision (if any)	<p>Section 4.3.2 of the NSW PPP Guidelines refers to an “Interactive Tender Process” and provides, “An interactive tender process generally involves the procuring agency holding a series of individual workshops with shortlisted bidders, usually during the RFP ‘bid’ phase, and in accordance with the probity framework”.</p> <p>This process provides shortlisted bidders with an opportunity to discuss the development of their concepts and designs and to seek clarification and feedback in the context of the government’s output requirements, before lodgement of bids.</p> <p>The interactive tender process should also include a planning workshop with each shortlisted bidder and the Department of Planning and Infrastructure, so that bidders have opportunity to discuss the development approval process and any conditions that have been or are likely to be set.</p> <p>The objective is to improve the quality of bid submissions, minimise overall transaction costs and ultimately deliver better outcomes for the public, through clear communication of the government’s requirements. The RFP should specify the procedures, timetable and protocols for the interactive tender process.”</p> <p>Furthermore, Section 15 of the National PPP Guidelines Volume 2 provides, “An interactive tender process is recommended for PPP procurements. The aim is to assist agencies and their advisors to consider this matter more rigorously and consistently when designing the tender process and timetable. The interactive tender process is continually being refined and the guidance below and in Appendix E reflects the current practice.”</p> <p>Yet, while such interactive tender process takes place, it is preceded by an expression of interest phase component. Section 4 of the National PPP Guidelines provides, “Comprehensive project development leads to the next stage of issuing an invitation for expressions of interest (EOI) to the marketplace”.</p> <p>As discussed in the project development phase section, while some consultation with market participants and marketing of the project is expected (and encouraged) to precede this stage, the EOI phase is the first step in the formal bidding process.”</p>
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Section 4.5 (Short-list Bidders) of National PPP Guidelines Volume 2 “Practitioners’ Guide” - expressions of interest are submitted to the marketplace. Based on the evaluation process, the evaluation team will choose a short list of bidders who are invited to participate in the formal bidding process, known as the RFP phase. This Section provides, “Based on the evaluation process, the evaluation team will choose a short list of bidders who are invited to participate in the formal bidding process, known as the RFP phase.”</p>
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	No
Default	Yes

Relevant legal/regulatory provision (if any)	Section 4.5 (Short-list Bidders) of National PPP Guidelines Volume 2 “Practitioners’ Guide” - expressions of interest are submitted to the marketplace. Based on the evaluation process, the evaluation team will choose a short list of bidders who are invited to participate in the formal bidding process, known as the RFP phase. This Section provides, “Based on the evaluation process, the evaluation team will choose a short list of bidders who are invited to participate in the formal bidding process, known as the RFP phase.” Contributors confirm that this embodies the multi-stage tendering process being the default procedure to procure PPP projects, complemented by the “interactive tender process” as per Section 15 of the National PPP Guidelines Volume 2 and Section 4.3.2 of the NSW PPP Guidelines.
22.4. Competitive dialogue: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	The competitive dialogue falls within the “interactive tender process” meaning, according to contributors. Section 15.1 of the National PPP Guidelines Volume 2 provides, “The interactive tender process (ITP) provides an opportunity for an appropriate amount of direct interaction between the project team and short-listed bidders prior to bid submission. It is an opportunity for the project team to explain and clarify their expectations and for shortlisted bidders to seek relevant feedback for their bid development. This two-way communication takes the form of presentations, meetings and/or workshops involving individual bidders and the government project team.
22.5. Direct negotiation with more than one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.6. Direct negotiation with only one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.7 Other. Specify:	No
Available	n/a
Default	n/a

Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Table 3.2 of the NSW PPP Table, "Once Cabinet has approved project funding and PPP procurement, the procuring agency should: 1) update the business case, including economic and financial appraisals; 2) determine project scope and management plan, including: - related services to be privately provided, - risk allocation matrix, - timetable for procurement showing key milestones, and - probity plan; Details of the procurement process, which also include the proposed timeframes for the project and dates for all key milestones, would be provided in the expression of interest (EOI) according to Section 4.1.1 of the National PPP Guidelines Volume 2 "Practitioners' Guide."
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/s hortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The previously mentioned Table 3.2 of the NSW PPP Guidelines and Section 4.1.1 of the National PPP Guidelines would apply.
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	Yes
If yes, please specify and provide the relevant	This is to ensure a transparent process is in place where bidders are well informed

legal/regulatory provisions (if any):	
If no, please elaborate:	n/a
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 4.3 of Volume 2 of the National PPP Guidelines provides that a briefing session can be held for interested parties to ask questions of the EOI and to reiterate the requirements of the government. All questions are to be structured around RFP clarification questions and the feedback is to be clear, equitable and relate to the RFP. Section 4.3.2 of the NSW PPP Guidelines confirms this and further provides that the process is intended to be an “interactive tender process.”
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 4.3 of Volume 2 of the National PPP Guidelines provides that a briefing session can be held for interested parties to ask questions of the EOI and to reiterate the requirements of the government. All questions are to be structured around RFP clarification questions and the feedback is to be clear, equitable and relate to the RFP, Appendix E, of these Guidelines further provides that protocols that would apply include, <ul style="list-style-type: none"> 1) There should be equitable and respectful dialogue between parties. 2) Open two-way communication is critical to a successful ITP process. All representatives should interact positively with the other team.” Section 16.1 of the National PPP Guidelines Practitioners’ Guide states that: “PPP projects may require a greater opportunity for bidders to seek clarification and advice than is necessary on some other projects. In these circumstances, three considerations arise: <ul style="list-style-type: none"> 1. ensuring that information provided by a bidder does not become available to any other bidder, whether directly or by inference; 2. ensuring that no bidder receives an unfair advantage as a result of elaboration given in response to a question; and 3. ensuring that related probity practices are sufficiently well designed so they do not unnecessarily restrict achievement of value for money.

	Section 4.3.2 of the NSW PPP Guidelines confirms this and further provides that the process is intended to be an “interactive tender process” and further provides “The objective is to improve the quality of bid submissions, minimise overall transaction costs and ultimately deliver better outcomes for the public, through clear communication of the government’s requirements. The RFP should specify the procedures, timetable and protocols for the interactive tender process.” Contributors confirm that such questions and feedback are disclosed to all bidders.
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	This is to ensure a transparent process is in place where bidders are well informed.
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Contributors have provided that the “interactive tender process” would acknowledge more elaboration than only questions and clarifications. Rather, it creates greater dialogue that includes holding workshops as referred to in Sections 4.3.2 of the NSW PPP Guidelines and Chapter 14 of the National PPP Guidelines Volume 2 and its Appendix E.
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Appendix E of the National PPP Guidelines Volume 2 further provides that protocols that would apply include, 1) There should be equitable and respectful dialogue between parties; 2) Open two-way communication is critical to a successful ITP process. All representatives should interact positively with the other team.” Section 4.3.2 of the NSW PPP Guidelines confirms this and further provides that the process is intended to be an “interactive tender process” and further provides “The

	objective is to improve the quality of bid submissions, minimise overall transaction costs and ultimately deliver better outcomes for the public, through clear communication of the government’s requirements. The RFP should specify the procedures, timetable and protocols for the interactive tender process.” Contributors confirm that such questions and feedback are disclosed to all bidders on this basis.
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	This is to ensure a transparent process is in place where bidders are well informed.
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 5.1.1 of the National PPP Guidelines Volume 2, the proposal schedules should include, “Financial details of the proposed funding structure and level of commitment.” Section 4.1.1 of the same Volume provides that private partners should provide, “Commercial & financial information, details of the EOI respondent, including details of each participating organisation if it is a consortium, the formal nature of their agreement to bid as a consortium and indicative terms of arrangements of any special purpose vehicle; details of the proposed funding structure; <input type="checkbox"/> demonstration of an understanding and acceptance of the proposed commercial principles/risk allocation; details of the financial position of each consortium member and proposed parent backing, if relevant.”
If no, please elaborate:	n/a
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in	Yes

the tender documents?	
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 5.3.4 of the National PPP Guidelines, "The evaluation process and report should also include a confirmation from the Probity Practitioner that the evaluation process was undertaken in accordance with the evaluation plan and probity plan."
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	Yes
Please provide the relevant legal/regulatory	No regulatory basis

provisions (if any):	
The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	According to Section 6.4 of the National PPP Guidelines Volume 2, "It is common practice for a public announcement of the contract and the successful bidder to be made when contracts have been executed." Section 16.2.3 of Volume 2 of the National PPP Guidelines provides that communication does not cease once the tender process is completed. Shortly following financial close, there is likely to be communication around the disclosure requirement (for example, the publication of the project summary and public release of the contract).
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	Website of the relevant government agency/procurement authority, including http://www.rms.nsw.gov.au/ . And https://tenders.nsw.gov.au/
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 5.4 of Volume 2 the National PPP Guidelines states that all bidders must be provided with an evaluation of their bids and an overview of the deficient parts of their proposal in a report. Section 12.3 of the same Volume also provides that the evaluation report should arrive at a joint view from the separate evaluation teams (e.g. finance/commercial, design, service delivery) on the overall ranking of bids and a recommendation of which bidder should be the preferred party. The report should discuss

	the rankings within each area of valuation and the basis for the procurement team's agreement on the preferred bidder, within a debriefing process.
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 5.4 and Section 17 of Volume 2 the National PPP Guidelines provide that all bidders must be provided with an evaluation of their bids and an overview of the deficient parts of their proposal in a report. Section 12.3 of the same Volume also provides that the evaluation report should arrive at a joint view from the separate evaluation teams (e.g. finance/commercial, design, service delivery) on the overall ranking of bids and a recommendation of which bidder should be the preferred party. The report should discuss the rankings within each area of valuation and the basis for the procurement team's agreement on the preferred bidder, within a debriefing process.
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory	n/a

provisions (if any):	
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 4.4.1 of the NSW PPP Guidelines, “Before seeking Cabinet approval to begin contract negotiations with one or more proponent, the agency together with NSW Treasury, must develop the ‘negotiation parameters’ schedule as per Appendix 3. Any departures from the Commercial Principles underpinning the RFP documentation should be explained. This will inform Cabinet of the type of commercial deal the agency wants to pursue with the private sector. The terms and conditions submitted to Cabinet must outline the scope of the project and areas for final negotiations, as well as any conditions that must be satisfied for the Government to support the project.” These negotiations precisely refer to negotiations between the agency and the private partner. Section 6.2 of the National PPP Guidelines Practitioners’ Guide (Volume 2) sets out the key terms that should underpin the negotiation framework between the selected bidder and the procuring authority. Notably, it states that “if the preferred bidder’s circumstances change and require the project to proceed on a materially different basis from the initial bid, the procurement team must undertake a full re-evaluation ... [which] should then reconsider other bidders’ proposals”
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	The restrictions must be respected, as if the preferred bidder’s circumstances change and require the project to proceed on a materially different basis from the initial bid, the procurement team must undertake a full re-evaluation (which should then reconsider other bidders’ proposals) (section 6.2 of Volume 2 of the National PPP Guidelines).
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	Yes
If yes, please provide the	As noted in Section 5.1 of the National PPP Guidelines and expanded on in Section 5.1 of the NSW PPP Guidelines, all NSW PPPs are subject to Ministerial Memorandum No. 2007-

relevant legal/regulatory provisions (if any):	<p>01 Public Disclosure of Information Arising from NSW Government Tenders and Contracts (M2007-01) and the Government Information (Public Access) Act 2009 (GIPA), which set out specific disclosure requirements arising from NSW Government tenders and contracts. Under the GIPA, for example, contracts are to be disclosed to the public 45 working days after the contract becomes effective. The NSW PPP Guidelines (in Section 5.3) require that a contract summary be tabled in Parliament. Contract summaries are a summary of a project's contracts but do not have any independent legal status. In addition, the NSW Guidelines state that amendments to contracts that have the effect of changing the relevant contract summary information undergo the same public disclosure requirements, including an audit by the Auditor-General of an updated contract summary.</p>
32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	<p>No</p>
Publication of the full PPP contract without including all its annexes and appendixes	<p>No</p>
Publication of a summary of the PPP contract without publishing the full PPP contract	<p>Yes</p>
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	<p>No</p>
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	<p>No</p>
32.2. If yes, is it published online?	<p>Yes</p>

If yes, please specify the website:	https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects and Published on the website of the relevant government agency/procuring authority including http://www.rms.nsw.gov.au/
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 5.3 of the NSW Guidelines state that any significant amendment(s) to the contract should also be disclosed within 60 days of the amendment(s) becoming effective.</p>
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Broadly outlined in Section 4.3.5 of the National PPP Guidelines Overview and expanded upon in Appendix H of Volume 2 of the National PPP Guidelines (Contract Management Guidance) and Section 4.5.1 of the NSW PPP Guidelines, where, “After contract execution, management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements.” According to Section 7.1 of the National PPP Guidelines Practitioners’ Guide (Volume 2), “for each lifecycle stage, there is a range of contract management activities that should be conducted by the relevant agency if the contract is to be managed effectively”.</p>
41.1. If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract	<p>Yes</p>

management team	
Relevant legal/regulatory provisions (if any):	National PPP Guidelines, Volume 2 Practitioner’s Guide, Section 7, 8.7 and Appendix H provide a basis. And according to Section 4.5.1 of the NSW PPP Guidelines, “After contract execution, management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements.”
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	Yes
Relevant legal/regulatory provisions (if any):	According to Section 4.5.1 of the NSW PPP Guidelines, “For many projects, it may be useful for the procurement steering committee to oversee the implementation of the project during the initial delivery phase (i.e. during construction and at least the first two years of operations).”
Elaboration of a PPP implementation manual or an equivalent document	Yes
Relevant legal/regulatory provisions (if any):	National PPP Guidelines, Volume 2 Practitioner’s Guide, Section 7.2 and Appendix H Section H.6.2 - “In a well-managed PPP project, the contract director, with assistance from the procurement team, prepares a comprehensive contract administration manual (or similar) that enables the Contract Director to understand the key contract provisions and the environment in which the contract must be administered.”
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	Yes
Relevant legal/regulatory provisions (if any):	Appendix H Section H.6.13 of the National PPP Guidelines, Volume 2 Practitioner’s Guide, provides, “In establishing a system of ongoing contract management and review, the contract director relies on the review tools and processes. Step three also requires the contract director to establish a culture of ongoing contract management which includes the systematic review of the contract management strategy and tools and processes during the lifecycle of the project. Senior management should support the culture of effective contract management in the relevant government entity, including via any available contract management training.”
Establishment of a risk mitigation mechanism which considers the	Yes

<p>evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</p>	
<p>Relevant legal/regulatory provisions (if any):</p>	<p>National PPP Guidelines, Volume 2 Practitioner’s Guide, Section 7.4 provides, “Changes during the lifecycle of a PPP project require proper management. Changes may be contemplated at the time of procurement and provided for in the contract, or not contemplated during procurement but seen as desirable or necessary alterations to services or the contract. In either case, change events are both a source of risk and a potential opportunity to extract additional benefits from the project. The relevant agency should ensure there is no unintentional take-back of risk allocated to the private party.” Appendix H Section H.5 provides, “To ensure that the value-for-money outcome obtained in the initial contractual allocation of project risks is not compromised and risk is managed over the life of the contract, the government party must devote adequate resources to contract management activities. Inadequate resourcing can lead to inappropriate contract management strategies and skill levels to control and mitigate risks borne by government. In addition, a lack of adequate contract management capabilities can lead to the unintentional ‘take-back’ of risks that have been allocated to a private party through the earlier procurement process.”</p>
<p>41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 4.1.2 of the NSW PPP Guidelines applies, where it provides, “The project team members should include financial, technical, operational and legal skills to reflect the breadth of skills brought to the project by a private sector consortium and should have clear lines of accountability and quality of resources applied to the project team.” Section 8 of the National PPP Guidelines Volume 2 outlines a suggested project management structure for the delivery of a successful PPP project. And further provides in Section 8.1 that the specialist expertise required for the project includes financial,</p>

	technical, operational and legal skills. The mix of skills and experience will vary by project type.
The PPP contract management team members are required to meet sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 4.5.1 of the NSW PPP Guidelines provides, “For many projects, it may be useful for the procurement steering committee to oversee the implementation of the project during the initial delivery phase (i.e. during construction and at least the first two years of operations). In NSW, Cabinet may also require regular progress reports for major projects so that it can monitor implementation. This will be determined on a case-by-case basis.”</p> <p>Section 7.3 of the National PPP Guidelines Volume 2 under “Construction Stage” provides, “Specific contract management issues can arise during the construction stage that can impact future service delivery or value for money. Relationships with the private party are developed and governance and reporting arrangements are established during the construction stage.</p> <p>The period of design development requires due diligence by the contract management team to ensure the government party receives the facility that meets requirement and that the private party is likely to have the capability to provide the contracted services. The</p>

	<p>Technical Completion and commissioning tests leading up to Commercial Acceptance are key milestones during this stage.”</p> <p>Section 10.4.1 of Volume 3 of the National PPP Guidelines, it states, “Government (and any person it authorises) has the right to enter, inspect and test any part of the works during the construction phase and to inspect any drawings, documents, test results, samples and specifications used in relation to such works.” Furthermore, Section 10.5 sets out a role for a “completion certifier” (who may be either the Project Director or an independent completion certifier appointed by the parties), who monitors progress and undertakes various reviews, tests and certifications ahead of issuing a Certification of Completion. Extensive completion criteria are set out in Section 10.5.1 of Volume 3 of the National PPP Guidelines.</p>
42.1. If yes, is the PPP contract construction performance information made available to the public?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
42.2. If yes, is the PPP contract construction performance information made publicly available online?	Yes
If yes, please specify the website:	Through media releases on the relevant procuring entity website
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory	The evaluation system is broadly outlined in Section 4.3.5 of the National PPP Guidelines Overview and expanded upon in Appendix H of Volume 2 of the National PPP Guidelines (Contract Management Guidance) and Section 4.5.1 of the NSW PPP Guidelines, where, “After contract execution, management of the project will normally be transferred to an

<p>provisions (if any):</p>	<p>implementation team and ultimately to ongoing agency service delivery arrangements.” Furthermore, NSW PPP Guidelines Section 5.4 on “Post Implementation Reviews”.</p> <p>A Post-Implementation Review (PIR) should be undertaken jointly by the procuring agency and NSW Treasury for all PPPs. PIR is a comprehensive feedback mechanism designed to assess project outcomes, collecting and utilising knowledge learned throughout a project to optimise the delivery and outputs of future projects.</p> <p>The PIR of the project development, procurement process, initial contract execution and implementation should generally be initiated twelve months after operations have commenced, although it may be undertaken earlier. The PIR should specifically review:</p> <ul style="list-style-type: none"> • project formulation, objectives and appropriateness of project scope; • design performance, including effectiveness of risk exposure/risk sharing; • approval process; • project delivery, including delivery time and budget performance; • project operations, including service delivery and financing; • project management/procedures; • functional competence of infrastructure, including networking and interfacing; • industry, community and environmental management, including industrial relations; • any non-competitive tender process through unsolicited proposal or direct negotiation (if applicable) (see section 3.6). <p>Any deviations from these Guidelines should clearly be identified and justified in the PIR. Service delivery performance and contractual compliance will also be reviewed regularly throughout the life of the contract by the responsible agency and, at least initially, by the Steering Committee.”</p>
<p>43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract</p>	<p>Yes</p>
<p>Relevant legal/regulatory provisions (if any)</p>	<p>NSW PPP Guidelines Section 5.4 on “Post Implementation Reviews”, after providing components of such review that include assessment against the aforementioned criteria and concludes by underlining that “any deviations from these Guidelines should clearly be identified and justified in the PIR.” Section 7.3 of the National PPP Guidelines Practitioners’ Guide Volume 2 provides, “the Procuring Agency [should be] regularly reviewing the quality of the service against the key performance indicators and output specifications”.</p>
<p>The procuring or contract management authority can abate (reduce) payments for non-performance of operating</p>	<p>Yes</p>

obligations under the PPP contract	
Relevant legal/regulatory provisions (if any)	<p>Section 12.1 of Volume 2 of the National PPP Guidelines provides, “In general terms, the key features of a payment mechanism are:</p> <p>1) the payment mechanism should seek to make abatements for sub-standard performance so that the private party’s financial motivators coincide with those of government;</p> <p>2) in some circumstances (for example, a package of schools), unavailability of one whole facility (school) may result in no payment for that one facility rather than no payment for the whole package. Abatements should reflect the severity of failure, so that no service should lead to no payment, but a minor failure to a lower level of abatement...”</p> <p>Section 7.3 of the National PPP Guidelines Practitioners’ Guide Volume 2 also provides, “the contract management team must have robust arrangements for monitoring outputs and a clear strategy around key contentious matters such as paying invoices and abatement of service payments”.</p>
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract	No

performance information made publicly available online?	
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Sections 29 of Volume 3 and 28 of Volume 7 of the National PPP Guidelines regulate that any change in ownership, control, or structure of the PPPCo, the private party must obtain government consent. This is also grounded on Section 4.5.3 of the NSW PPP Guidelines and circular NSWTC 15-16 published on 25 August, 2015 by the NSW Treasury which states that any material contractual or commercial changes to existing PPP projects must first be approved by the NSW Treasury.
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the	Yes

<p>private partner during an initial period (e.g. construction and first five years of operation).</p>	
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>National PPP Guidelines Section 29.2.1 provides, Prior consent</p> <p>(a) In some jurisdictions, the private party must not permit any change to the legal or beneficial ownership of any shares or units or any other interests in any member of the private party group without government's prior consent.</p> <p>(b) In other jurisdictions, the limitation on change in ownership without consent is limited to the change in control of any member of the private party group.</p> <p>(c) Government will not unreasonably withhold consent to the change in ownership/change in control. The project agreement may stipulate circumstances where it will be deemed to be reasonable for government to withhold consent, for example where government is of the reasonable opinion that one or more of the following conditions apply:</p> <p>(i) the private party has not provided it with full details of the proposed change in ownership / change in control and any further information requested by government;</p> <p>(ii) the change in ownership / change in control is to take effect prior to the second anniversary of completion (where it relates to the private party only); the proposed entity:</p> <p>(iii)</p> <p>(A) is not solvent and reputable;</p> <p>(B) has an interest which conflicts in a material way with the interests of government and is involved in a business or activity which is incompatible, or inappropriate, in relation to the construction or operation of the facility; and</p> <p>(C) does not have a sufficient level of financial and technical capacity;</p> <p>(iv) the proposed change in ownership / change in control is against the public interest;</p> <p>(v) the proposed change in ownership / change in control would increase the level of risk or liabilities to government; or</p> <p>(vi) the proposed change in ownership / change in control would impact adversely on the ability or capacity of the private party to perform its obligations under the project agreement or any other project documents, and if applicable, of the material sub-contractor to perform its obligations under the material sub-contract.</p> <p>(d) Failure to obtain this consent will be a Default Termination Event.</p> <p>(e) Change in control of a material sub-contractor will also require the prior written consent of government. In some jurisdictions, failure to obtain such prior consent will result in a Default Termination Event. In other jurisdictions, while failure to obtain such prior consent will not automatically trigger a Default Termination Event, a failure to cure an unauthorised change in control of a material sub-contractor within a specified period will do so.</p>
<p>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as</p>	<p>Yes</p>

the original operator.	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>National PPP Guidelines Section 29.2.1 provides,</p> <p>Prior consent</p> <p>(a) In some jurisdictions, the private party must not permit any change to the legal or beneficial ownership of any shares or units or any other interests in any member of the private party group without government's prior consent.</p> <p>(b) In other jurisdictions, the limitation on change in ownership without consent is limited to the change in control of any member of the private party group.</p> <p>(c) Government will not unreasonably withhold consent to the change in ownership/change in control. The project agreement may stipulate circumstances where it will be deemed to be reasonable for government to withhold consent, for example where government is of the reasonable opinion that one or more of the following conditions apply:</p> <p>(i) the private party has not provided it with full details of the proposed change in ownership / change in control and any further information requested by government;</p> <p>(ii) the change in ownership / change in control is to take effect prior to the second anniversary of completion (where it relates to the private party only); the proposed entity:</p> <p>(iii)</p> <p>(A) is not solvent and reputable;</p> <p>(B) has an interest which conflicts in a material way with the interests of government and is involved in a business or activity which is incompatible, or inappropriate, in relation to the construction or operation of the facility; and</p> <p>(C) does not have a sufficient level of financial and technical capacity;</p> <p>(iv) the proposed change in ownership / change in control is against the public interest;</p> <p>(v) the proposed change in ownership / change in control would increase the level of risk or liabilities to government; or</p> <p>(vi) the proposed change in ownership / change in control would impact adversely on the ability or capacity of the private party to perform its obligations under the project agreement or any other project documents, and if applicable, of the material sub-contractor to perform its obligations under the material sub-contract.</p> <p>(d) Failure to obtain this consent will be a Default Termination Event.</p> <p>(e) Change in control of a material sub-contractor will also require the prior written consent of government. In some jurisdictions, failure to obtain such prior consent will result in a Default Termination Event. In other jurisdictions, while failure to obtain such prior consent will not automatically trigger a Default Termination Event, a failure to cure an unauthorized change in control of a material sub-contractor within a specified period will do so.</p>
In other cases, flexibility to change the ownership structure and/or assign the contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard	<p>No regulatory basis</p>

contractual provisions (if any):	
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Section 19 of the National PPP Guidelines Volume 3, “Government may initiate modifications to the facility and the services specifications at any time during the contract term. The cost of government-initiated modifications will be borne by government. The private party may initiate modifications to the facility at any time during the contract term. Government will have complete discretion as to whether and on what basis it accepts a modification initiated by the private party. If accepted, the modification will be funded by the private party. Where modifications result in net savings due to overall improvements, innovations, time or cost savings, those net savings will be shared with government.” According to Section 19.1 of the National PPP Guidelines Volume 3, “modifications” will be defined on a project by project basis but will generally include:(i) in the design and construction phase, changes to the design requirements; and(ii) in the operating phase, changes to the facility or the contracted services.” Section 18.1 of the same Guidelines in Volume 7 provides a similar component. Section 18.1 of the same Guidelines in Volume 7 provides a similar component.</p>
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section 2.1 of the National PPP Guidelines Practitioners’ Guide states that “if the Procuring Agency wishes to renegotiate any area of a PPP contract after it has been approved and signed by government, the agency should be required to obtain approval prior to commencing renegotiations from the Relevant PPP Authority.”</p> <p>Similarly, Section 3.3 of the NSW PPP Guidelines states that “renegotiation of any significant areas of a PPP contract after it has been approved and signed by Government will require the agency to obtain Cabinet approval prior to commencing negotiations”.</p> <p>Section 3.4 of the NSW PPP Guidelines provides, “Any amendments to previously signed PPP contracts may also require the Treasurer’s approval under the PAFA Act.”</p>
46.2. If yes to question 46,	<p>Yes</p>

<p>which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</p>	
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>No regulatory basis</p>
<p>A change in the risk allocation of the contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>No regulatory basis</p>
<p>A change in the financial and/or economic balance of the contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>No regulatory basis</p>
<p>A change in the duration of the contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>No regulatory basis</p>

A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
46.3. Can the procuring authority unilaterally modify a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Section 7.4 of Volume 2 of the National PPP Guidelines provides that Government initiated modifications are likely to occur during the life of most PPP projects to change the facilities constructed and managed or maintained by the private party. Typically, an owner modification will involve the government preparing a change proposal to submit to the private party for design and costing.
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Sections 21 of Volume 3 and 20 of Volume 7 of the National PPP Guidelines apply to NSW in this regard, which provide that in some jurisdictions, Force Majeure Events are defined as Relief Events which last for longer than a specified period. In other jurisdictions, Force Majeure Events are defined as a limited category of events of exceptional severity which are outside the control of either party and prevent the private party from performing all or a material part of its non-financial obligations under the project agreement. If a Force Majeure Event occurs, the private party (and government) will receive relief from obligations as is reasonable and in accordance with the principles set out in this Chapter.
Material Adverse government action .	Yes

<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): Continue Reading</p>	<p>Contributors provided that this would fall under the scope of “Relief Events,” where Section 16 of the National PPP Guidelines Volume 3 provide a list that includes, “(iii) an act or omission by government or relevant government-related parties at the facility/site (but only in their capacity as a contracting party) other than the performance of the core services or any act or omission authorised or permitted under the project contracts; or an act or omission which is a reasonably foreseeable consequence of the performance of the core services or other authorised/permitted acts or omissions;(iv) failure by an authority (including a utility provider) to carry out works or provide services which it is obliged to carry out or provide (noting that some jurisdictions may limit entitlement to Relief to where the relevant authority has not acted in accordance with its statutory powers);(v) any blockade or embargo (noting that some jurisdictions may limit this to a site specific blockade or embargo).”</p> <p>Section 15 of the National PPP Guidelines Volume 7 further provides,</p> <p>(b) Possible Key Risk Events may occur in either the construction period or the operating term however, the majority of Possible Key Risk Events are typically events occurring during the operating term given the greater potential to cause a material adverse effect described in paragraph (a) above. The specific Possible Key Risk Events will be determined on a project specific basis but may include:</p> <p>(i) the occurrence of a Project Specific Change in Law (discussed in section 19.3 in Chapter 19 (Compliance with Law);</p> <p>(ii) as a result of a native title application or claim the private party is directed, ordered or required to cease to perform the operating activities (or to change the way it does so) (other than by way of a Final Court Decision which may be a Termination Event);</p> <p>(iii) as a result of a challenge to a planning approval obtained by government the private party is ordered by a court to cease carrying out the operating activities (or to change the way it does so) (other than by way of a final court decision which may be a termination event and provided the challenge was not the result of a breach of the planning approval or project agreement;</p> <p>(iv) the occurrence of an Uninsurable Force Majeure Event that affects the project works or facility;</p> <p>(v) in the case of a toll road project, in some jurisdictions, the offence of failing or refusing to pay tolls or charges is not enforced by government consistent with government’s approach on an equivalent enforcement regime at contractual close;</p> <p>(vi) in some jurisdictions, an identical directly competing facility is opened during the contract term; and</p> <p>(vii) in the case of a toll road project, in some jurisdictions a principal traffic connection is closed other than for specified events such as emergency, material threat to health or safety of the public, upgrade and maintenance or a special event.</p>
<p>Change in the Law.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>According to Section 20 of the National PPP Guidelines Volume 3 under “Change of Law,” “Change in Law” encompasses the following occurrences after the execution of the project agreement:(a) the enactment of new Laws; (b) the amendment, repeal or change of any Law; and(c) in some jurisdictions, any judgment of a relevant court of Law which changes a binding precedent. For these purposes, “Law” means legislation, subordinate legislation, rules and regulations and policies or guidelines with which the private party is legally required to comply.”</p>
<p>Refinancing.</p>	<p>Yes</p>

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Sections 32 of Volume 3 and 31 of Volume 7 of the National PPP Guidelines and Section 4.5.2 of the NSW PPP Guidelines provide a basis. As per the National Guidelines, all re-financings other than those contemplated at financial close will require consent by Cabinet. In NSW the Treasurer (under the PAFA Act) is also required to provide consent for any re-financings not included in the base case financial model. Where there are no contractual provisions otherwise, any re-financing gains are to be shared between government and the private party on a 50:50 basis provided the projected equity return at the time of the re-financing (taking into account any re-financing) is above that reflected in the original base case financial model. In NSW, any proposed re-financing should not result in a debt balance, at any time between the date of the refinancing and the end of the concession, greater than the projected debt balances in the original base case financial model. The transaction costs related to future debt refinancing should be appropriately allocated in the original base case financial model.</p>
Subcontracting and replacement of the subcontractors.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Sections 28 of Volume 3 and 27 of Volume 7 of the National PPP Guidelines provide that all sub-contracts and material sub-sub-contracts must be in an agreed form. The main construction and operations sub-contracts may not be amended without government consent. Amendments to other material sub-contracts (including, sub-sub-contracts) which may impact on government's rights, or lessen the ability of the private party to perform its obligations, may not be made without government consent.</p> <p>Circular NSWTC 15-16 published on 25 August 2015 by the NSW Treasury which states that any material contractual or commercial changes to existing PPP projects must first be approved by the NSW Treasury. Change of ownership, control or financier, or major subcontractor is an event which Treasury must be consulted on to assess whether it requires government consent and implications for the project.</p>
48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard	<p>In Sections 31 of Volume 3 and 30 of Volume 7 of the National PPP Guidelines, the dispute resolution processes are designed to provide resolution of matters in dispute in a speedy and non-litigious, but fair and independent manner.</p>

contractual provisions (if any):	
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	Yes
Please provide the relevant legal/regulatory/stand and contractual provisions (if any)	<p>In Sections 31 of Volume 3 and 30 of Volume 7 of the National PPP Guidelines, the dispute resolution processes are designed to provide resolution of matters in dispute in a speedy and non-litigious, but fair and independent manner.</p> <p>Contributors provided that standard procedures would involve the establishment of a panel, comprising a senior government representative and a senior private party representative, who will be the initial forum in the event of a dispute. Failing that, the panel will refer the matter for independent determination. A dispute may also be resolved by arbitration where provided for in the contract. Domestic arbitration would be regulated by NSW Commercial Arbitration Act 2010 No. 61, which provides in Section 1 on "Scope of application (of Model Law Art 1)", "(1) This Act applies to domestic commercial arbitrations. Note. The International Arbitration Act 1974 of the Commonwealth (Act No. 136 of 1974 as amended) covers international commercial arbitrations and the enforcement of foreign arbitral awards." International Arbitration Act 1974 of the Commonwealth [hereinafter "International Arbitration Act"]. Australia is also party to both the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (New York Convention) on March 26, 1975 and Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) since May 2, 1991.</p>
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes

If yes, please provide the relevant legal/regulatory provisions/standards and contractual provisions (if any):	<p>NSW Commercial Arbitration Act 2010 No. 61 in Section 35 under “Recognition and enforcement” (of Model Law Art 35) provides, “(1) An arbitral award, irrespective of the State or Territory in which it was made, is to be recognised in this State as binding and, on application in writing to the Court, is to be enforced subject to the provisions of this section and section 36.</p>
International arbitration	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions/standards and contractual provisions (if any):	<p>Part II - “Enforcement of foreign awards” of the International Arbitration Act 1974 of the Commonwealth (Act No. 136 of 1974 as amended) Section (3) “Interpretation” provides “(2) In this Part, where the context so admits, enforcement, in relation to a foreign award, includes the recognition of the award as binding for any purpose, and enforce and enforced have corresponding meanings.” Section 8 of this Act furthermore details circumstances of the recognition of foreign awards. Moreover, Australia has also acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (New York Convention) on March 26, 1975, which allows for the enforcement and recognition of foreign arbitral awards.</p>
Investor-State arbitration	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions/standards and contractual provisions (if any):	<p>Australia is a contracting party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) since May 2, 1991. International Arbitration Act 1974 Section (2D) “Objects of this Act”, “(f) to give effect to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States signed by Australia on 24 March 1975.” Section (2D) of the International Arbitration Act under “Objects of this Act” provides, “The objects of this Act are: (a) to facilitate international trade and commerce by encouraging the use of arbitration as a method of resolving disputes; and (b) to facilitate the use of arbitration agreements made in relation to international trade and commerce; and (c) to facilitate the recognition and enforcement of arbitral awards made in relation to international trade and commerce; and (d) to give effect to Australia’s obligations under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958 by the United Nations Conference on International Commercial Arbitration at its twenty-fourth meeting; and (e) to give effect to the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985 and amended by the United Nations Commission on International Trade Law on 7 July 2006; and (f) to give effect to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States signed by Australia on 24 March 1975.”</p>
49. Does the regulatory framework (including	<p>Yes</p>

<p>standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?</p>	
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Section 23.1 of the National PPP Guidelines Volume 7 under “Events of Default” provides, Events of Default of the private party may include: (f) any of the private party, the private party’s material sub-contractors or their guarantors become insolvent.” Footnote 80 provides, “The project agreement will contain a broad definition of the concept of “insolvency”. The project agreement may also allow the replacement of material sub-contractors and/or guarantors within an agreed timeframe by an entity which is reputable and able to perform the obligations imposed on the relevant sub-contractor or guarantor in the Project Contracts, or that is otherwise acceptable to government.” Section 23.2 further detail cure periods and remedies for Events of Default of the private party that allow flexibility in such restructuring to take place.</p>
<p>50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Contributors provide that this would be detailed in the PPP agreement, but it would find ground based on Sections 25.1.1 of Volume 3 and 24.1.1(b) of Volume 7 of the National PPP Guidelines, where, subject to the financiers’ rights under the funder’s direct agreement, if a Default Termination Event occurs, government has the right to terminate the project agreement without any cure period being given to the private party.</p>
<p>50.1. If yes, which of the following options best describes the</p>	<p>No</p>

lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Contributors provide that this would be detailed in the PPP agreement, but it would find ground based on Sections 25.1.1 of Volume 3 and 24.1.1(b) of Volume 7 of the National PPP Guidelines, where, subject to the financiers' rights under the funder's direct agreement, if a Default Termination Event occurs, government has the right to terminate the project agreement without any cure period being given to the private party.</p>
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	No
Please Specify:	n/a

51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>The grounds are: 1. Termination for Contractor Default; 2. Voluntary Termination by Government; 3. Termination due to Force Majeure Sections 25 of Volume 3 and 24 of Volume 7 of the National PPP Guidelines, and briefly mentioned in Section 5.3 of the NSW PPP Guidelines.</p>
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Sections 25.6 of Volume 3 and 24.3 of Volume 7 of the National PPP Guidelines, (a) Upon termination, the private party will be entitled to compensation in accordance with the principles set out in Chapter 26 (Termination Payments). (b) The rights and obligations of the parties to the project agreement (or other agreements that may be relevant to include here, such as any lease between the private party and government) will cease except for: (i) any accrued rights and obligations; and (ii) any rights or obligations which are expressed to continue after termination.</p>
Unsolicited Proposals	
34. Are unsolicited proposals in Australia: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	<p>No</p>

Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	The National PPP Guidelines provide that unsolicited proposals are accepted to provide a source of innovative ideas about how to improve the delivery of government services (Section 3.6 of Volume 6 of the National PPP Guidelines). The NSW Government also published a Guide for Submission and Assessment of Unsolicited Proposals in January 2012 (updated in February 2014) [hereinafter “NSW Unsolicited Proposals Guide”] which outlines the Guiding Principles, Roles and Responsibilities of the Government and the Process for receipt and consideration of unsolicited proposals.
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	This is detailed in Section 5 of the NSW Unsolicited Proposals Guide. It involves an initial assessment of the bid, and if warranted, proceeds to request a detailed proposal. If the government approves this proposal it then requests a Binding Offer and, if accepted, enters into the contract.
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory	This is detailed in Section 5 of the NSW Unsolicited Proposals Guide. It involves an initial assessment of the bid, and if warranted, proceeds to request a detailed proposal. If the government approves this proposal it then requests a Binding Offer and, if accepted, enters into the contract.

provisions (if any):	
36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>The NSW Unsolicited Proposals Guide Section 3.3 would provide a basis. As such, proposals are to be assessed against the following criteria: (i) uniqueness; (ii) value for money; (iii) whole-of-government impact, including opportunity cost; (iv) return on investment; (v) capability and capacity of proponent to deliver the proposal; (vi) affordability and (vii) appropriate risk allocation. Additional assessment criteria relevant to a particular proposal might also be applied.</p>
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>

The procuring authority does not evaluate unsolicited proposals against existing government priorities.	<p>No</p>
Please elaborate and provide examples:	<p>n/a</p>
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Part 2 of the NSW Unsolicited Proposal Guide provides that the NSW Government may subject unsolicited proposals to the market if the proposal does not satisfy the assessment criteria set out in the Guide but the Government sees merit in the proposal.</p>
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>No regulatory basis</p>
and the time in calendar days:	<p>n/a</p>
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compens	<p>No</p>

<p>ate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.</p>	
<p>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</p>	No
<p>39.3 Bid Bonus.</p>	No
<p>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</p>	No
<p>39.5 Other.</p>	No
<p>Please specify:</p>	n/a
<p>Please provide the relevant legal/regulatory provisions (if any):</p>	n/a