

## PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN BENIN

SURVEY QUESTION	ANALYSIS
<b>PPP Regulatory Framework</b>	
<b>2. Does the regulatory framework in your country allow procuring PPPs?</b>	Yes
<b>If yes, please specify the relevant regulatory framework and the year of adoption:</b>	<p>Benin adopted a PPP Law (Law No. 2016-24 of October 24, 2016 related to the legal framework of the Public Private Partnerships for the Republic of Benin and 3 implementing decrees (Decree no. 2017-044 of January 27, 2017 related to the ad hoc commissions in charge of PPP procurement procedures, Decree no. 2017-043 of January 27, 2017 related to the PPP Cell and Decree of January 27, 2017 related to the control and regulation of PPP procurement and operation). However, the decision DCC 17-039 of the Constitutional Court on February 23, 2017 declared this Law unconstitutional, hence; it is non-applicable. A new Law was adopted on June 28, 2017, which is after this study's cut off date.</p> <p>Consequently, the following analysis is based on the previous regulatory framework, which was not specific to PPPs. The general rules of public procurement apply:</p> <ul style="list-style-type: none"> <li>(i) Law No. 2009-02 dated August 7, 2009 (hereinafter the PP Law) regulating public procurement and delegation of public services in the Republic of Benin apply to PPPs in Benin.</li> <li>(ii) Decree no 2012-224 of August 13, 2012 related to attributions, organization and functioning of the Authority regulating public procurement contracts</li> <li>(iii) Decree no 2010-495 of November 26, 2010 related to attributions, organization and functioning of the National direction controlling public procurement contracts</li> <li>(iv) Decree no 2011-478 of July 8, 2011 creating the Code of Ethic and moralization in public procurement contracts and public service delegations.</li> <li>(v) Decree no 2011-479 of July 8, 2011 setting thresholds for procuring, controlling and approving public procurement contracts.</li> </ul> <p>Additionally, Decree No 2014-349 of June 2, 2014 concerning guidance note on PPP completes the existing regulation for public service delegations, as indicated in its Section 1.2 (hereinafter the "Guidance Note").</p> <p>Article 1 of the PP Law indicates that the public service delegations procurement is regulated by this Law. Consequently, all rules related to procurement are applicable unless provided otherwise in tile IV specific to public service delegations. Title VI of the Law related to dispute resolution applies as well. However, provisions related to the planning and execution of public procurement contracts are not applicable to public service delegations. Article 105 of the PP Law indicates the controlling entities for public procurement are also competent for public service delegations.</p>

	<p>The Guidance Note on PPPs (see below) confirms that, until a new code is adopted, the entities in charge of control and regulations within the public procurement Code remain competent for PPPs. Those entities shall get support from the PPP Unit.</p> <p>Following the general principle according to which special provisions shall apply over general ones, in case of discrepancy between the 2 regimes, the rules contained in the Guidance note shall prevail.</p> <p>Article 3 of the PPP Law defines public service delegations as a Contract by which a legal entity of public law or private law attributes the management of a public service within its remit to an agent whose remuneration is bound or substantially assured by the results of the operation of the service; it includes 'régies intéressées', 'affermages', public service concessions, and whether it includes the execution of a work. Section 2.1 of the Guidance Note indicates that no legal definition of the PPP exists, it is a generic name, which recovers all the contractual forms of cooperation of a public entity even of an entity "under public influence" with the private sector in sight in particular of the financing, the realization, the exploitation of work (s) and/or equipment and, or to confide the exploitation of a service whether it is or not public.</p>
<p><b>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</b></p>	<p><a href="http://www.arpmp.bj">www.arpmp.bj</a></p>
<p><b>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?</b></p>	<p>Yes</p>
<p><b>Please describe:</b></p>	<p>Benin adopted a PPP Law (Law No. 2016-24 of October 24, 2016 related to the legal framework of the Public Private Partnerships for the Republic of Benin) and 3 implementing decrees (Decree no. 2017-044 of January 27, 2017 related to the ad hoc commissions in charge of PPP procurement procedures, Decree n 2017-043 of January 27, 2017 related to the PPP Cell and Decree of January 27, 2017 related to the control and regulation of PPP procurement and operation). However, the decision DCC 17-039 of the Constitutional Court on February 23, 2017 declared this Law unconstitutional; hence, non-applicable.</p>
<p><b>2.2. Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b></p>	<p>Yes</p>
<p><b>Please describe:</b></p>	<p>The PPP Law and its implementation decrees are to be modified to comply with the Constitution in order to be applicable. The Law no. 2016-24 of June 18, 2017 applied the decision from the Constitutional Court.</p>

<b>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.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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</b>	No
<b>If yes, specify and provide the relevant legal/regulatory provisions:</b>	n/a
<b>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax</b>	Yes

incentives, special tax depreciation treatment, etc.)?	
If yes, please specify and provide the relevant legal/regulatory provision (if any):	Section 8 of the Guidance note indicates PPPs can be the subject to a fiscal treatment negotiated between the economic operator and the public authorities, according to the current texts regarding tax systems. The negotiated tax regime will depend on commitments of the partner regarding social integration.
5. Please identify the PPP procuring authorities in Benin and provide their website(s) (if available):	<p>Pursuant to Section 3.1.2. of Decree No 2014-349 of June 2, 2014 concerning guidance note on PPP: The legal entities that may enter into public-private partnerships as a contracting authority are: the State, local authorities, public establishments, companies with majority public financial participation, state companies, public law organizations as defined in Directive No. 04/2005/CM/UEMOA, and the associations formed by one or more legal entities of public law</p> <p>The main administrations with websites are linked to the following web link: <a href="http://www.gouv.bj/">http://www.gouv.bj/</a></p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name, and its website (if available):	<p>Section 5.1.2. of the guidance note provides for a support cell in Public Private Partnership (hereinafter the PPP Unit) that is an organization, expert in the implementation structure of the institutional framework and management of PPP. It is attached to the Presidency of the Republic. Its effectiveness relies on a multidisciplinary organization (economists, financial, legal, administrative , etc.). The CAPPP is a center of knowledge and expertise for the implementation of PPP projects .</p> <p>However, the PPP unit is not operational yet. Article 105 of the PP Law indicates that the controlling entities for public procurement are also competent for public service delegations. The Guidance Note confirms that, until a new code is adopted, the entities in charge of control and regulation within the public procurement Code remain competent for PPPs.</p>
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	Yes
6.2 PPP capacity building for other public authorities.	Yes
6.3 PPP promotion among the public and/or private sectors in national and international forums.	Yes
6.4 Technical support in implementing PPP projects.	Yes

<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	Yes
<b>6.6 Revision of fiscal risks born by the Government.</b>	No
<b>6.7 Consultation with affected communities on potential impact of PPP projects.</b>	No
<b>6.8 Approval of PPP projects.</b>	Yes
<b>6.9 Undertaking the procurement of PPPs.</b>	No
<b>6.10 Oversight of PPP implementation.</b>	Yes
<b>6.11 Other</b>	No
<b>6.11 please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions:</b>	<p>Section 5.1.2 of the guidance note provides for the PPP Unit, a center of knowledge and expertise for the implementation of PPP projects. As such, it:</p> <ul style="list-style-type: none"> <li>- Advises the government on all matters related to PPP;</li> <li>- Provides carrying organizations a catalog of projects eligible for PPP;</li> <li>- Provide assistance to holders organizations in achieving the socio-economic studies for projects outside the catalog and feasibility studies;</li> <li>- Issue an opinion on the socio -economic studies and externalities and feasibility studies;</li> <li>- Assists in the contract award process;</li> <li>- Supports the carrying organizations in the management of contract enforcement.</li> </ul> <p>However, the PPP unit is not operational yet. Article 105 of the PP Law indicates the controlling entities for public procurement are also competent for public service delegations. The Guidance Note confirms that, until a new code is adopted, the entities in charge of control and regulation within the public procurement Code remain competent for PPPs.</p>
<b>PPP Preparation</b>	
<b>8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 91 of the PP Law, signed contracts are sent by the national direction controlling public procurement contracts for approval to the Ministry of finance for the state contracts. Non-approved contracts are void.

<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The organic law no. 2013-14 related to finance Laws indicates that for PPP contracts, engagement authorizations cover, from the year those contracts are entered into, all of the legal engagements (article 21).
<b>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).</b>	n/a
<b>Accounting and reporting according to other international standard (e.g. European System of Accounts).</b>	n/a
<b>Please specify:</b>	n/a
<b>Other.</b>	n/a
<b>Please specify:</b>	n/a
<b>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.)?</b>	Yes
<b>If yes, please specify the relevant authority</b>	(1) The PPP Cell (2) national direction controlling public procurement contracts (3) Cell controlling public procurement (4) Council of Ministries

<p><b>and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>(1) Pursuant to section 5.1.2 of the Guidance Note, the socio-economic and externalities study is mandatory for every PPP project. And is submitted for approval to the PPP Unit.</p> <p>(2) Article 98 of the PP Law requires the national direction controlling public procurement contracts to validate the selection procedure beforehand.</p> <p>(3) Pursuant to article 12 of the PP Law, the Cell controlling public procurement validates the procurement plan and the tender documents before launching the procurement process and the corresponding advertising.</p> <p>(4) Section 5.1.1 of the Guidance Note indicates that the Council of Ministries authorize some key steps of the PPP process. Although, no precision regarding which steps are concerned are provided.</p>
<p><b>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?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Pursuant to article 12 of the PP Law, the Cell controlling public procurement validates the report of comparative analysis of proposals and the provisional award prepared by the procurement commission. The cell furthermore realizes a juridical and technical control of the public procurement contract, and addresses clarification and modification requests in order to ensure conformity with regulations.</p> <p>Article 90 indicates that, in the event of a contract financed through exterior means, the lender shall give its opinion before the contract's signature.</p> <p>Section 5.1.1 of the Guidance Note indicates that the Council of Ministries authorizes the contracts' signature.</p>
<p><b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>No regulatory basis</p>
<p><b>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</b></p>	<p>Yes</p>

<p><b>national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Section 3.2.1 of the Guidance note requires the need to be justified by an economical and/or social domain confirmed by its inscription within a document of sectorial and governmental strategies. The program of actions of the government 2016-2021 includes 45 programs, which contain PPPs. Section 4 moreover, requires the definition of a national PPP policy indicating the global strategy for PPPs in Benin; the PPP potential; the programs and projects to finance.</p> <p>Document of Growth strategy for poverty reduction (SCRP 2011-2015) identifies PPP as means to reach the objectives. Paragraph 342 indicates the PPP will be promoted to design, finance, build operate or preserve projects of public interest. Potentially affected sectors are: drinking water, waste, transportation, energy, telecommunications tourism, health, and education. Those objectives will be implemented and monitored through 3 institutions: council of orientation, council of piloting, decentralized committees (paragraph 392). Details are provided in the following paragraphs, which describe the responsibilities of each in order to ensure an efficient monitoring.</p>
<p><b>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</b></p>	<p>No</p>
<p><b>If yes, please elaborate:</b></p>	<p>n/a</p>
<p><b>The procuring authority does not evaluate PPPs against existing government priorities.</b></p>	<p>No</p>
<p><b>Please elaborate and provide examples:</b></p>	<p>n/a</p>
<p><b>11.1. Based on your experience, is it always the case that this prioritization is done in practice in</b></p>	<p>Yes</p>



<b>accordance with the provisions of the regulatory framework described above?</b>	
<b>If yes, please specify:</b>	Projects tend to be adopted before the compliance decision intervenes. However, a number of projects are included in the program of actions of the government 2016-2021.
<b>If no, please elaborate:</b>	n/a
<b>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)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>Section 3.2.1. of the Guidance Note requires a socio-economic and externalities study to be prepared.</p> <p>Section 6.2.1.provides that PPP Projects should be submitted to a socio-economic study to determine the expected costs and benefits to the public person. The record of the socio-economic study must include a detailed description of the project, key data on its size and its timing including the presentation of:</p> <ul style="list-style-type: none"> <li>- Socio-economic indicators (IRR, NPV) demonstrating the economic and social returns in the long term,</li> <li>- The financial commitments that have an impact on public finances;</li> <li>- Where appropriate, the ability to pay the users;</li> <li>- The ability to provide a major contribution to local, national and regional development,</li> <li>- The impact on sustainable development (environmental and social)</li> <li>- The degree of risk on the basis of a risk mapping,</li> <li>- Variations and alternatives to the investment project,</li> <li>- A first comparative analysis of financing.</li> </ul>
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No
<b>Details:</b>	It seems a Socio-economic analysis is not conducted in practice.
<b>12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Section 3.2.1. of the Guidance Note requires an affordability assessment to be prepared

	<p>Section 6.2.1. provides that PPP Projects should be submitted to a socio-economic study to determine the expected costs and benefits to the public person. The record of the socio-economic study must include a detailed description of the project, key data on its size and its timing including the presentation of:</p> <ul style="list-style-type: none"> <li>- Socio-economic indicators (IRR, NPV) demonstrating the economic and social returns in the long term,</li> <li>- The financial commitments that have an impact on public finances...</li> </ul> <p>Furthermore, Section 6.2.4. of the guidance note on PPP provides that PPP projects are subject to a fiscal sustainability study to assess the full impact of the transaction on public finances and credit availability.</p>
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No
<b>Details:</b>	It seems an affordability assessment is not conducted in practice.
<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Section 6.2.1. of the guidance note provides that PPP Projects should be submitted to a socio-economic study to determine the expected costs and benefits to the public person. The record of the socio-economic study must include a detailed description of the project, key data on its size and its timing including the presentation of: The degree of risk on the basis of a risk mapping.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No
<b>Details:</b>	It seems a risk analysis is not conducted in practice.
<b>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)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a

<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	The regulatory framework does not require a comparative assessment to be prepared but procuring authorities realize one in practice.
<b>12.5. Financial viability or bankability assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No
<b>Details:</b>	Contributors indicate financial viability is not always assessed
<b>12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Even though the regulatory framework does not require it, the procuring authorities assess the market before procuring a project.
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 88 of the Law on environment, in particular, indicates that "no person may undertake facilities, operations, installations, plans, projects or programs or the construction of works without following the procedure of environmental impact study, where the latter is required by law and regulations...the impact study must be made and submitted with the application for authorization to the Minister."
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Article 90 of the Law on environment indicates that the types of activities and list of equipment are defined by a decree, as well as the parameters, content and modalities of the impact study. However, the impact study shall always include: analysis of the initial environmental state of the site; the activity's effects on the environment; measures taken by the promoter to suppress, reduce or compensate the negative effects and their cost, before, during and after the project is realized. Furthermore, pursuant to article 91, the Minister shall make the study public and create a commission of public hearing for the environment. When the

	impact study is deemed satisfying, the Minister delivers a certificate of environmental conformity to the promoter.
<b>Is the assessment done in practice?</b>	No
<b>Details:</b>	Contributors provide that in practice, environmental impacts are not assessed.
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to section 3.2.2 of the Guidance Note, public interest is ensured by a consultation and communication process to meet the preoccupations of diverse actors affected by the projects, including users and citizens.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No
<b>Details:</b>	It seems that the market's interest is not analyzed in practice.
<b>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 Memorandum to the bidders)?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b>	n/a
<b>13.1. Are the assessments published online?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>specify the website</b>	n/a
<b>please specify which of the assessments are published online:</b>	n/a
<b>14. Does the procuring authority include a draft PPP contract in the request for proposals?</b>	No

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate</b>	The private party suggests a draft PPP contract proposal and submits it with the analysis documents.
<b>14.1. Are the tender documents published online?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and please specify the website:</b>	n/a
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	No
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	n/a
<b>16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Section 7 of the Guidance Note requires contract to include clauses related to the public partner's commitment to provide or have provided the administrative authorizations necessary for the project
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No

<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Section 7 of the Guidance Note requires the contract to include clauses related to the public partner's commitment to provide or have provided the administrative authorizations necessary for the project
<b>16.4. Obtaining the required land: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to section 6.2.4. of the Guidance Note, the PPP unit assists the public authorities in acquiring lands. Section 7 requires the contract to include land occupation, granted that the contract implies occupation title
<b>16.5. Obtaining the required right of way: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>PPP Procurement</b>	
<b>18. Which of the following options best describes the required qualifications of the bid evaluation committee</b>	Yes

<b>members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 3 of the PP Law defines a procurement Commission as any commission created by the procuring authority to open and evaluate bids. Commission, in its conclusion, recommends whether or not to award the contract.</p> <p>Article 10 indicates the composition, attributions and functioning are set by Decree.</p> <p>According to article 14 of Decree no. 2010/496, the procurement commission is composed of:</p> <ul style="list-style-type: none"> <li>- the person in charge of public procurement</li> <li>- the technical director</li> <li>- the financial control delegates</li> <li>- the general direct of tax and lands</li> <li>- a jurist</li> </ul> <p>The person in charge of public procurement can add any person whose competence is deemed necessary.</p>
<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The bid evaluation committee members are not required to have any specific qualifications.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>19. Does the procuring authority issue a public procurement notice of the PPP project?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to article 59 of the PP Law: When the amount of public procurement equals or exceeds the regulatory threshold referred to in Article 6 -public procurement by tender- of this law: it must be the subject of a notice of appeal to competition to the public made by insertion in same terms as a document model, which requires notices to be set by decree of the Council of Ministers. The notice of appeal should be advertised in the public procurement journal and / or any other national publication and / or international and also in electronic mode.</p> <p>This also refers to prequalification.</p> <p>The absence of publication of the notice, which is mandatory under the seal of approval of the National Monitoring Directorate of the competent public procurement, is sanctioned by the nullity of the proceedings.</p>

<b>19.1. If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.marches-publics.bj/">http://www.marches-publics.bj/</a> <a href="http://www.gouv.bj/">http://www.gouv.bj/</a>
<b>20. Are foreign companies prohibited from participating in the bidding process?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Article 60 of the PP Law, in open and restricted procedures, the deadline for receipt of applications or tenders cannot be less than thirty (30) calendar days for the markets with amounts exceeding the threshold referred to in Article 6 of the this Act, and forty five (45) calendar days for contracts above the Community threshold of publication from the date of publication of the notice. Article 98 confirms this timeline for public service delegations.
<b>and the time in calendar days:</b>	45
<b>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? Open tendering: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to article 28 of the PP Law, the procuring authority chooses the procurement mode according to the Law, but open tendering is the rule. The use of any other mode shall be exceptional, justified by the procuring authority and authorized by the national direction controlling public procurement contracts. Pursuant to article 33, the tender can be open, restricted or with contest. Article 99 specific to concessions however indicates a prequalification of candidates shall always be organized. Article 100 however indicates that the selection can be in 2 stages when there is a requirement of prequalification. Section 6.2.5 of the Guidance note indicates a PPP is procured through open tendering or two stages tendering. In all cases, the tender is preceded by prequalification. It appears that, within those contradictory provisions, a pre-qualification stage is not always organized.



<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	No
<b>Default</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Section 6.2.5 of the Guidance note indicates a PPP is procured through open tendering or two stages tendering. In all cases, the tender is preceded by prequalification. Article 36 of the PPP Law provides details.
<b>22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Pursuant to article 38 of the PP Law, the open tendering is a two stage process when bidders are first invited to propose technical bids without price indication, on the basis of general principles of conception or performance standards and subject to precision and to later adjustments of technical order and/or financiers, occurring within the framework of discussions led with the contracting authority.</p> <p>Following the evaluation by the contracting authority of the offers in the first stage, the tenderers who satisfy a minimum criteria of qualification and who submitted a technically corresponding offer are invited to participate in a second stage during which they present definitive technical proposals matched by price, on the basis of the tender documents beforehand revised by the contracting authority.</p> <p>Article 39 indicates the cases in which this procedure can be used, as follows: great complexity; when the contract shall be awarded on performance criteria and not detailed technical specifications. It shall be justified by the procuring authority and authorized by the national direction controlling public procurement contracts.</p> <p>Article 99 specific to public service delegations confirms the possibility of using a 2 stage process. Section 6.2.5 of the Guidance note indicates a PPP is procured through open tendering or two-stage tendering.</p>
<b>22.4. Competitive dialogue: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.5. Direct negotiation with more than one candidate: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 48 also provides for purchase-by-agreement (gré à gré), after a tender process with candidates susceptible of executing the contract. Article 49 indicates the restricted cases in which it can be used: pattern or exclusive rights of one private operator; technical or artistic of one private operator; extreme urgency in case of a failing private partner of the procuring authority; urgency with force majeure circumstances; research, trial or development works, supply or services.

	<p>The agreements must be beforehand authorized by the national direction controlling public procurements contracts on the basis of a special report established by the commission of procurement of the contracting authority, with a session of analysis of the motives justifying the appeal to the procedure in the presence of an independent observer, who will have established a separate assignment report and attached it to the special report of the commission of procurement. The national director controlling public procurement contracts watches that on every fiscal year and for every contracting authority, the added amount of the agreements do not exceed ten percent of the total amount of public procurement in the Republic of Benin. Any contract concluded according to the procedure by agreement is communicated for information to the authority of regulation of public procurement.</p> <p>Article 100, specific to public service delegations, confirms the possibility of using that procedure.</p>
<b>22.6. Direct negotiation with only one candidate: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Pursuant to article 28 of the PP Law, the procuring authority chooses the procurement mode according to the Law, but open tendering is the rule. The use of any other mode shall be exceptional, justified by the procuring authority and authorized by the national direction controlling public procurement contracts. They can, exceptionally, be procured through negotiation within conditions defined by the Law.</p> <p>Article 48 requires a special authorization from the national direction controlling PPPs to negotiate a contract.</p> <p>Pursuant to the Guidance Note, a contract can be procured through direct agreement in case of unsolicited proposal; if only one operator can realize the project; after an ineffective procedure</p>
<b>22.7 Other. Specify:</b>	No
<b>Available</b>	n/a
<b>Default</b>	n/a
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to article 53 of the PP Law, the tender documents are at the disposal of all candidates from the tender notice's publication.</p> <p>Article 54 requires the tender documents to include the tender mode, locations of consulting the tender documents, qualification of candidates, main evaluation criteria, location date and limit time to submit an offer.</p>
<b>If no, please elaborate:</b>	n/a

<b>22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 33 of the PP Law, the tender procedure concludes without negotiations, based on the objective evaluation criteria mentioned in the tender documents. Pursuant to article 37 of the PP Law, a prequalification notice is published as a tender notice, and the prequalification tenders include a precise description of the conditions to fill in order to be prequalified.
<b>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate:</b>	In practice the pre-qualification criteria are not always included in the tender documents.
<b>23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	n/a
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	n/a
<b>24. Besides questions and clarifications, can the</b>	No

<b>procuring authority conduct pre-bidding conference?</b>	
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	n/a
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	n/a
<b>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?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate:</b>	Nothing in the law states expressly that the procuring authority requires the bidders to prepare and present a financial model with their proposals
<b>26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to article 33 of the PP Law, the tender procedure concludes without negotiations, based on the objective evaluation criteria mentioned in the tender documents.</p> <p>Article 79 indicates that the evaluation is made based on the economical, financial and technical criteria mentioned in the tender documents.</p> <p>Article 102 specific to concessions confirms the convention is awarding based on an optimal combination of evaluation criteria planned in the tender documents.</p> <p>According to Section 6.2. (IV) of the Guidance Note: Partnership contracts are</p>

	concluded with the candidates that submitted the economically most advantageous offer. The determination of the economically most advantageous offer is made on the basis of the optimum combination of comprehensive cost and other criteria such as running costs, technical performance , architectural quality , protection measures of environment, the delivery or performance , the share of the contract the applicant undertakes to entrust local companies. Finally, and most importantly, the criteria must be listed in the tender documents.
<b>Evaluation criteria is not set in the tender documents</b>	No
<b>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.</b>	Yes
<b>Please specify and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 33 of the PP Law, when less than 3 offers have been presented, the procuring authority opens the bidding for 2 additional weeks, after which bids are open, regardless of their number. The tender process is only valid if, by the end of the bidding period, the procuring authority received at least one submission considered admissible and compliant.
<b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	No
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The procuring authority does not award a PPP contract if only one proposal is submitted.</b>	No
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The regulatory framework does not include any provisions.</b>	No
<b>28. Does the procuring authority publish the award notice?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant</b>	According to Article 93 of the PP Law, a final award notice is published within 15 days of the contract's entry into force in the public procurement journal and a WAEMU support.

<b>legal/regulatory provisions (if any):</b>	Article 104 specific to public service delegations confirms the necessity of publishing an award notice. That notice contains the name of the selected private partner and a summary of the main clauses.
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.marches-publics.bj/">http://www.marches-publics.bj/</a> <a href="http://www.gouv.bj">http://www.gouv.bj</a>
<b>29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Article 85 of the PP Law, the procuring authority must communicate in writing to unsuccessful bidders, the reasons for the rejection of their offer, the amount of the contract awarded, the name of the successful tenderer, and a copy of the award Minutes, within five (05) business days from the receipt of a written request from such bidder.
<b>If no, please elaborate:</b>	n/a
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Article 85 of Law N. 2009-02, the procuring authority must communicate in writing to unsuccessful bidders, the reasons for the rejection of their offer, the amount of the contract awarded, the name of the successful tenderer, and a copy of the award Minutes, within five (05) business days from the receipt of a written request from such bidder.
<b>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?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	n/a
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of</b>	No

the PPP contract in order to prevent an unfair disadvantage to the other bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 104 of the PP Law specific to public service delegations confirms the necessity of publishing an award notice. Notice contains the name of the selected private partner and the main clauses of the contract.
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	No
Publication of the full PPP contract without including all its annexes and appendixes	No
Publication of a summary of the PPP contract without publishing the full PPP contract	Yes
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	No
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	No
32.2. If yes, is it published online?	No
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent	Yes

<b>amendment made to the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 5 of Decree no. 2011-478 requires a publicity of modifications made to the contract during implementation.
<b>PPP Contract Management</b>	
<b>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)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Section 6.2. of the Guidance note on PPPs (Stage 7: management of the implementation of PPP contracts): Monitoring the implementation and the performance of the contract is provided by a monitoring team from the public sector. The PPP unit is responsible for supporting the administrative entity of regulation in the ex-post audit of contracts. To do this, the public party sends the PPP unit the contracts signed and notified by the private partner, along with the activity reports produced by the latter. Pursuant to article 11 of the PP Law, the national commission of public procurement controls the PPP implementation methods of delegations. It controls only until the regulating authority of public procurement has been informed of a denunciation or complaint related to the implementation.
<b>41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</b>	No



Relevant legal/regulatory provisions (if any):	n/a
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	No
Relevant legal/regulatory provisions (if any):	n/a
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.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.1. If yes, is the PPP contract construction	n/a

<b>performance information made available to the public?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 7 of the Guidance note requires the contract to include clauses related to the control of the contract execution by the public authority, in particular with respect to performance objectives, including those related to sustainable development and the production by the partner of the accounts and implementation reports.</p> <p>Pursuant to section 3.2.2. of the Guidance Note, the public authority keeps at all times, control of the projects realized in PPP and thus have to report to the Council of Ministers. For that purpose, they make sure:</p> <ul style="list-style-type: none"> <li>- To set up a control mechanism;</li> <li>- To obtain from the private partner any relevant information, within the framework of the annual report handed by the latter, to allow them to state the availability and the quality of the service offer;</li> <li>- To take into account the environmental and social issues.</li> </ul>
<b>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</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	Pursuant to section 3.2.2. of the Guidance Note, the private partner is assigned performance objectives and is sanctioned in the event of unsatisfactory performance. Furthermore, the report prepared by the private operator includes an indicator monitoring the performance objectives included in the contract.
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	No

<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The private partner must provide the procuring or contract management authority with periodic operational and financial data</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	According to Section 6.2.7. of the Guidance note, the private partner produces activity reports. These include activity reports to the partnership agreement: the report includes the following: Economic and accounting data: - results of the annual operation account; - A presentation of economic methods and the calculation factors used to determine income and expenses charged to the income account of the operation...; - A statement of changes made in the framework of the contract, and the amortization table to it; - An account of other property and assets necessary for the operation of the facility...; - A statement of other renewal expenditure in the year; - Commitments to financial implications related to the contract and necessary for the continuity of the public service; - Annual ratios of economic profitability and internal profitability of the project and the distribution between the cost of equity and cost of debt related to financing activities and assets items of the contract...
<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	No regulatory basis
<b>The PPP contract performance information must be available to the public</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>43.2. Is PPP contract performance information made publicly available online?</b>	No
<b>If yes, please specify the website:</b>	n/a
<b>44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in</b>	No

the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
In other cases, flexibility to change the ownership structure and/or assign the contract.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes

<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Section 3.2.1. of the Guidance Note requires the contract to include: A mechanism of consensual and periodic revision to take into account the new external factors, which intervened during the implementation of the projects; The guarantee to resort to the efficient devices of management and control of contracts; efficient and independent mechanisms of dispute resolution during procurement and implementation.</p> <p>According to Section 6.7. of the Guidance note, PPP contracts should include, among others, provisions related to conditions of contract amendment to reflect the inclusion of needed changes, legislative or regulatory changes, as well as technical innovations.</p>
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>
<b>46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>
<b>A change in the risk allocation of the contract.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>
<b>A change in the financial and/or economic balance of the contract.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>
<b>A change in the duration of the contract.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/standard</b>	<p>n/a</p>

<b>contractual provisions (if any):</b>	
<b>A change in the agreed price or tariff.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>46.3. Can the procuring authority unilaterally modify a PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>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</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Section 7 of the Guidance note on PPPs provides that the PPP contract needs to include, among others, a provision relating to Force Majeure.
<b>Material Adverse government action .</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Section 7 (n) of the Guidance note requires the contract to include a clause related to the “fact of the prince”.
<b>Change in the Law.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Section 7 of the Guidance note requires the contract to include clauses related to the conditions to modify the contract to take into account the legislative or regulatory changes.
<b>Refinancing.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Subcontracting and replacement of the subcontractors.</b>	No

<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>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?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>According to Section 5.1.4. of the Guidance note, b) The administrative authority in charge of regulating public procurement, attached to the Presidency of the Republic, is the organ of appeal and facilitates dialogue between the parties in disputes.</p> <p>Pending the adoption of the new code of public procurement, organs of control and regulation of the public procurement code will remain relevant to PPPs. In the exercise of their duties, the two entities must necessarily rely on the expertise of the PPP Unit.</p> <p>Article 147 of PP Law makes provision for a mandatory complaint to the procuring authority or its hierarchical superior to find an amicable resolution of the dispute. If this is unsuccessful the dispute then goes to the jurisdictions or arbitration instances competent, according to the contractual and regulatory provisions (Article 148).</p> <p>Finally, section 3.2.2. of the Guidance Note requires the contract to include dispute resolution mechanisms.</p>
<b>48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body</b>	Yes
<b>If yes, please specify:</b>	<p>According to Section 5.1.4. of the Guidance note, b) The administrative authority in charge of regulating public procurement, attached to the Presidency of the Republic, is the organ of appeal and facilitates dialogue between the parties in disputes.</p> <p>Pending the adoption of the new code of public procurement, organs of control and regulation of the public procurement code will remain relevant to PPPs. In the exercise of their duties, the two entities must necessarily rely on the expertise of the PPP Unit.</p> <p>Article 147 of PP Law makes provision for a mandatory complaint to the procuring authority or its hierarchical superior to find an amicable resolution of the dispute. If this is unsuccessful the dispute then goes to the jurisdictions or arbitration instances competent, according to the contractual and regulatory provisions (Article 148).</p>
<b>Local courts</b>	Yes
<b>Domestic arbitration</b>	Yes

<b>International arbitration</b>	Yes
<b>Investor-State Dispute Settlement (ISDS)</b>	Yes
<b>Mediation</b>	No
<b>Please provide the relevant legal/ regulatory/standard contractual provisions (if any)</b>	<p>Additionally, according to Section 5.1.4. of the Guidance note, b) The administrative authority in charge of regulating public procurement, attached to the Presidency of the Republic, is the organ of appeal and facilitates dialogue between the parties in disputes.</p> <p>Pending the adoption of the new code of public procurement, organs of control and regulation of the public procurement code will remain relevant to PPPs. In the exercise of their duties, the two entities must necessarily rely on the expertise of the PPP Unit.</p> <p>Article 147 of PP Law makes provision for a mandatory complaint from the owner of a contract to the procuring authority or its hierarchical superior to find an amicable resolution of the dispute. If this is unsuccessful the dispute then goes to the jurisdictions or arbitration in instances as accorded to the contractual and regulatory provisions (Article 148).</p> <p>Section 7 of the Guidance note requires the contract to include clauses related to conditions within which arbitration can be used, according to the OHADA arbitration act or any other international arbitration, provided a contractual clause allows it.</p> <p>Finally, section 3.2.2. of the Guidance Note requires the contract to include dispute resolution mechanisms.</p>
<b>48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	Article 30 of the OHADA Uniform Act on Arbitration dated March 11, 1999: The arbitration judgment is subject to forced execution only by virtue of a decision of exequatur by the competent judge in the State.
<b>International arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	<p>Article 30 of the OHADA Uniform Act on Arbitration dated March 11, 1999: The arbitration judgment is subject to forced execution only by virtue of a decision of exequatur by the competent judge in the State.</p> <p>Article 3 of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards dated June 10, 1958 (in force in Benin since May 16, 1974): Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles: There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.</p>
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard</b>	<p>Article 54 of the International Center for the Settlement of International Disputes (ICSID) Convention (in force in Benin since Oct 14, 1966):</p> <p>(1) Each Contracting State shall recognize an award rendered pursuant to this</p>



<b>contractual provisions (if any):</b>	<p>Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.</p> <p>(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority, which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.</p> <p>(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.</p>
<b>49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?</b>	<p>No</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>
<b>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?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>
<b>50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.</b>	<p>n/a</p>

<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Other.</b>	n/a
<b>Please Specify:</b>	n/a
<b>51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Section 7 of the Guidance note provides that the PPP contract should include, among others, provisions regarding the grounds for termination of the contract by the procuring authority, for default of the private party, or for a reason of general interest, or pursuant to a force majeure circumstance, as well as the conditions of compensation (if any), covering the value of the work performed under the contract, as well as the losses or expenses incurred by any of the parties to the PPP contract.
<b>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Pursuant to section 3.2.2. of the Guidance Note, clauses set out the termination consequences, whether is it an early termination or not, in particular regarding technology transfer, and buildings and equipment property. Moreover, the private partner is eligible to damages when the public authority uses some of its prerogatives, such as termination of the contract for general interest.

	Section 7 of the Guidance note requires the contract to include clauses related to termination conditions and compensation of the fair value of works, service continuity.
<b>Unsolicited Proposals</b>	
<b>34. Are unsolicited proposals in Benin: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)</b>	No
<b>Explicitly allowed by the legal framework?</b>	Yes
<b>Not regulated by the legal framework, but do happen in practice?</b>	No
<b>Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)</b>	No
<b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</b>	According to Section 6.1.3 of the Guidance note, the submission of unsolicited proposals is permitted.
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b>	Section 6.1.3. of the Guidance note indicates: In case the public authority decides to carry on with the unsolicited proposal, the contract can be concluded only after realization of the socioeconomic and externalities study mentioned in the stage 1 of the point 6.2, the feasibility study mentioned in the stage 3 of the point 6.2, if necessary the study of budgetary sustainability mentioned in the stage 3 bis, and application of the procedures of procurement. However, according to Section 6.2. step 5 IV. of the Guidance note, when the proposal is among a prioritized sector for the competitiveness of the economy defined by Decree, the procuring authority with the PPP Unit's support, conducts counter studies of the ones prepared by the operator. Those studies are: a socioeconomic study; detailed technical proposals realized on the basis of technical, legal and financial feasibility studies; solutions of financing excluding any forms of public financing; and a study of detailed operation.
<b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b>	Yes

<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Section 6.1.3. of the Guidance note indicates: in case the public authority decides to carry on with the unsolicited proposal, the contract can be concluded only after realization of the socioeconomic and externalities study mentioned in stage 1 of the point 6.2, the feasibility study mentioned in stage 3 of the point 6.2, if necessary the study of budgetary sustainability mentioned in stage 3 bis, and application of the procedures of procurement.</p>
<p><b>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.</b></p>	<p>No</p>
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b></p>	<p>Yes</p>
<p><b>Please elaborate and provide examples:</b></p>	<p>Public initiative is preferred. There is consequently no information on evaluation against existing priorities of unsolicited proposals.</p>
<p><b>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Section 6.1.3. of the Guidance note indicates: in case the public authority decides to carry on with the unsolicited proposal, the contract can be concluded only after realization of the socioeconomic and externalities study mentioned in the stage 1 of the point 6.2, the feasibility study mentioned in the stage 3 of the point 6.2, if necessary the study of budgetary sustainability mentioned in the stage 3 bis, and application of the procedures of procurement.</p>

	<p>However, according to Section 6.2. step 5 IV. of the Guidance note, when the proposal is among a prioritized sector for the competitiveness of the economy defined by Decree, the procuring authority with the PPP unit's support, conducts counter studies of the ones prepared by the operator. If this counter expertise confirms the project's feasibility, the operator is invited within a fixed timeline to mobilize the necessary finances before signing the contract. If an operator does not observe the given timeline, the public authority can launch a tender procedure.</p>
<p><b>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Section 6.1.3. of the Guidance note indicates: in case the public authority decides to carry on with the unsolicited proposal, the contract can be concluded only after realization of the socioeconomic and externalities study mentioned in the stage 1 of the point 6.2, the feasibility study mentioned in the stage 3 of the point 6.2, if necessary the study of budgetary sustainability mentioned in the stage 3 bis, and application of the procedures of procurement.</p> <p>According to Article 60 of the PP Law, in open and restricted procedures, the deadline for receipt of applications or tenders cannot be less than thirty (30) calendar days for the markets with amounts exceeding the threshold referred to in Article 6 of this Act and forty five (45) calendar days for contracts above the Community threshold of publication, from the date of publication of the notice. Article 98 confirms that timeline for public service delegations.</p>
<p><b>and the time in calendar days:</b></p>	<p>45</p>
<p><b>39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.</b></p>	<p>No</p>
<p><b>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</b></p>	<p>No</p>
<p><b>39.3 Bid Bonus.</b></p>	<p>No</p>
<p><b>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</b></p>	<p>Yes</p>
<p><b>39.5 Other.</b></p>	<p>No</p>
<p><b>Please specify:</b></p>	<p>n/a</p>

**Please provide the relevant legal/regulatory provisions (if any):**

According to Section 6(1)(3) of the Guidance note on PPPs, a review of deals, if the proposal of the private party who submitted the offer is not accepted, the latter is granted a right of first refusal, allowing it to match the best offer. This pre-emptive right is subject to the condition that the deviation of notes between the two offers does not exceed 5 %. Compensation is paid to the leading candidate when ranking the candidate for the origin of the unsolicited offer use of pre-emptive right.