

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN BOTSWANA

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:	The PPP regulatory framework is comprised of the Public Procurement and Asset Disposal Act (last version from 2006), hereinafter “PPAD Act”, and the Public Procurement and Asset Disposal Regulations (last version from 2016), hereinafter “PPAD Regulations”. Additionally, in 2009 the Public-Private Partnership Policy and Implementation Framework (2009) was published by the MOF. The policy is based on the 2002/2003 Budget Speech and National Development Plan 9, when the government of Botswana announced that PPPs would be used extensively as a form of procuring and financing infrastructure projects in the public sector with the goal of ensuring sustainable investment in infrastructure and restoring soundness in public finances. Draft legislation is currently under review and a new committee has been established to work on implementing an enabling environment for the PPP framework.
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	PPAD (http://www.ppadb.co.bw/documents/PPAD_Act_revised.pdf) PPAD Regulations (http://www.ppadb.co.bw/Act_Reg/ppadb_regulations_revised.pdf) PPP regulatory Framework (http://www.sadcpppnetwork.org/wp-content/uploads/2015/02/PPP-Policy-and-Implementation-Framework-Print-Version_Botswana-2.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?	Yes
Please describe:	The Procurement and Asset Disposal Regulations were modified in February 2016.
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	According to our contributors, there is an Amendment of the Public Procurement and Asset Disposal Act and Regulations in progress.
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the	No

following sectors?: Transportation.	
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 explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
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.)?	No
If yes, please specify and provide the relevant	n/a

legal/regulatory provision (if any):	
5. Please identify the PPP procuring authorities in Botswana and provide their website(s) (if available):	According to Article 2 of the PPDA Act, procuring entity means any Ministry or department duly authorized to engage in public procurement. According to section 3.19 of the PPP Policy, the PPP Policy applies to all Ministries, Departments, Public Enterprises, Land Boards and Local Authorities. However, it'd not apply mandatorily to public enterprises that are self-financed. Additionally, PPDA Board procures projects for the central government.
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):	The Public Procurement and Asset Disposal Board, PPAD Board, (http://www.ppadb.co.bw), which operates under the Ministry of Finance and Development Planning. This agency is in charge of procurement (including PPPs) and assisting the procurement of governmental entities. Tough it is not specialized agency in PPPs. Additionally, the PPP Policy mentions the PPP Unit (a department within the Ministry of Finance and Economic Development), is expected to assist in PPP procurement. However, it is not fully ruled and implemented yet. IMF report about the implementation of PPPs and the role of the PPP Unit (file:///C:/Users/wb513421/Downloads/cr17188%20(1).pdf).
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
6.5 Identification and selection of PPP projects from the pipeline.	Yes
6.6 Revision of fiscal risks born by the Government.	No
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	Yes
6.9 Undertaking the procurement of PPPs.	No

6.10 Oversight of PPP implementation.	Yes
6.11 Other	Yes
6.11 please specify:	The PPP Unit also has the function of approval of PPP Feasibility studies and bid evaluation reports.
Please provide the relevant legal/regulatory provisions:	<p>For this section we have taken into account the functions of both, the PPDA Board and the PPP Unit.</p> <p>According to Article 26 of the PPDA Act the Board shall ensure that all public procurement and asset disposal entities, in making their decisions, take into account the principles of: “(a) an open, competitive economy and changing external obligations in relation, generally to trade and specifically to procurement, which dynamically impact on a continual basis on domestic procurement policy and practice; (b) standardization of procurement items in the interest of cost reduction, ease of maintenance and technological effectiveness; (c) aggregation of procurement and disposal activities and items that are common to procuring or disposing entities in order to benefit from economies of scale; (d) competition among contractors by using the most efficient and competitive methods of procurement or disposal to achieve the best value for money; (e) fair and equitable treatment of all contractors in the interest of efficiency and the maintenance of a level playing field; (f) accountability and transparency in the management of public procurement and in the disposal of public assets in order to promote ownership of the system and minimize challenges thereto; and (g) integrity, fairness of and public confidence in, the procurement and disposal process.”</p> <p>Also, according to the section 4.14 of the PPP Policy, the PPP Unit has the following responsibilities: overall co-ordination and monitoring of the PPP Policy and projects; technical assistance to Sponsoring Institutions; assisting in the selection of suitable PPP projects; approval of PPP feasibility studies and bid evaluation reports; and advocacy for PPPs and capacity building initiatives</p>
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 5.6 of the PPP Policy: The feasibility study report will conclude whether or not the project should be procured as a PPP and if so what will be the likely costs to the Institution on an annual basis. The study must be approved by the project committee, the sponsoring Institution, and the PPP Unit. MFDP will confirm whether budgetary funds will be available for the project. Furthermore, Section 39 provides: All of the foregoing must be compiled into a feasibility study report to be approved by the PPP project committee and then approved for procurement by both the MFDP, to indicate that funds will be available, following a peer review process from the PPP Unit.
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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).	No
Accounting and reporting according to other international standard (e.g. European System of Accounts).	No
Please specify:	n/a
Other.	No
Please specify:	n/a
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	Sponsoring institutions are primarily responsible for identifying potential PPP projects. Therefore, the approval of the sector ministry will also be needed

	before launching the procurement process. Cabinet and parliamentary approval will also be required before launching the procurement process.
and provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
10. Does the procuring authority use transaction advisors during the PPP project cycle?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 5.5 of the PPP Policy: “The feasibility study is carried out, where necessary, with the assistance of a transaction advisor who would be appointed by the sponsoring Institution with the assistance of the PPP Unit”. Paragraph 12 of Annex 3 of the PPP Policy provides: 12. The Institution must appoint a Transaction Advisor on the advice of the PPP Unit. A Transaction advisor is a person or persons that have appropriate skills and experience to advise the Institution with all phases of the PPP Procurement. It is typically a team of professional consultants working collectively under the direct control of the Institution.</p> <p>And finally, Annexure 3 shows the use of transaction advisors at the different stages of the procurement process</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	Yes

PPPs with other public investment priorities.	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Section 5.2 of the PPP Policy states that “Government Sponsoring Institutions have the primary responsibility for identifying potential PPP projects as part of the National Development Plan (NDP) process and the annual budgetary process. PPP projects should be identified and prioritized using a cost benefit analysis that examines how well they address the NDP’s development requirements. The PPP Unit shall co-ordinate this exercise to ensure that the NDPs include all projects that the Government should consider for procurement via the PPP method.”
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	No
If yes, please elaborate:	n/a
The procuring authority does not evaluate PPPs against existing government priorities.	No
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 prioritization of PPP projects with other public investment project prioritization is always done in practice in Botswana
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	Yes

analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	A socio-economic analysis is always done in practice when identifying and preparing a PPP project in Botswana
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)	According to Section 3.19 of the PPP Policy, (e) a public-private partnership must demonstrate “Value-for-Money” based upon affordability to the public institution and transfer of significant risk to the private party; additionally, according to Annexure 3, PPP project business case assessment, Feasibility Study including output specifications, risk transfer, value for money potential and affordability. And according to Section 26: Having completed the project due diligence, the next step in the feasibility study is the value assessment, which determines whether the proposed PPP project demonstrates affordability, appropriate transfer of technical, operational and financial risks to the private sector and value-for-money.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	According to Section 27 of the PPP Policy: This assessment entails construction of a base Public Sector Comparator (PSC) model, a risk-adjusted PSC model, construction of a PPP reference model and a risk adjusted PPP reference model, undertaking various sensitivity analyses, demonstrating affordability, conducting an initial value-for-money test, making the procurement choice, verifying all information used in making the assessment, and submission of the feasibility study for approval to proceed with procurement.
Is the assessment done in practice?	No
Details:	n/a
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	According to Annex 3 of the PPP Policy under the Business case/ Feasibility study, one of the steps to take is to undertake detailed analysis of project in terms of costs and risk assessment

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	The risk identification, allocation and assessment is done in practice in Botswana when identifying and preparing a PPP project
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)	According to Section 5.5. of the PPP Policy: In the second phase, a feasibility study is undertaken to help the Institution determine whether the PPP or conventional procurement method is the best option for implementing the proposed project. For an Institution to select whether to procure the project as a PPP, the feasibility study must demonstrate that the PPP choice is affordable, transfers appropriate technical, operational and financial risk to the private party and demonstrates value for money. It is therefore critical to the decision as to which procurement methodology is to be implemented. The feasibility study is carried out, where necessary, with the assistance of a transaction advisor who would be appointed by the sponsoring Institution with the assistance of the PPP Unit.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	A comparative assessment is done in practice in Botswana in order to evaluate whether a PPP is the best option when compared to other procurement alternatives
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	The viability or bankability assessment is usually done in practice when identifying and preparing a PPP project in Botswana
12.6. Market sounding and/or assessment (showing	Yes

evidence of investors' interest in the market for the project)	
Relevant legal/regulatory provision (if any)	According to Section 23 of the PPP Policy: Each solution is then evaluated, assessing how each meets the service needs of the Institution, its funding options, a preliminary assessment of the risks to be retained by each option, the citizen participation potential, transitional management issues, the technical suitability of each option, site issues, legislative compliance, effect on human resources, capability and willingness of the private sector to undertake any option identified, any qualitative factors and finally, the suitability of the project as a PPP such as the scale of the project, whether the output specifications are clear, whether the opportunity for risk transfer is present and whether there is market capability and appetite.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	A market sounding and assessment showing evidence of investors' interest in the market for the project, is done in practice when identifying and preparing a PPP project in Botswana
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	According to Section 52 of the PPP Policy, General information to bidders consists of:-... <input type="checkbox"/> Disclosure of all available environmental impact data ...
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	A specific methodology is described in the Environmental Impact Assessment Act (Cap 65:07)
Is the assessment done in practice?	Yes
Details:	An environmental impact assessment is conducted in practice when identifying and preparing a PPP project in Botswana
12.8. Consultation process with affected communities on potential impact of the PPP project	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes

Details:	According to our contributors, a consultation process with affected communities on potential impact of the PPP project is done in practice when identifying and preparing a PPP project in Botswana
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)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
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 30 of the PPDA Regulations states the bidding documents must content general conditions of the contract, special conditions of the contract and a contract form that will apply. According to Section 51 of the PPP Policy: The RFP generally is comprised of general information to bidders, essential minimum requirements, service specifications, standard specifications, a payment mechanism and penalty regime, the legal requirements and a draft PPP agreement, commitments required from bidders, evaluation criteria and bid formalities. Additionally, Section 59 provides that the RFP must include a draft PPP agreement, based upon the Standard Clauses for PPP Agreements.
If no, please elaborate	n/a
14.1. Are the tender documents published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a

and please specify the website:	n/a
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:	<p>Annex 2 of the PPP Policy contains a summary of the Standardized Contract Provisions; and Standard PPP document forms are published at: http://ipms.ppadb.co.bw/login</p> <p>Note: One of our contributors noted that the draft PPP agreement is based upon standard clauses for PPP agreements. The latter are based on international norms for PPP contracts and detail the specific obligations that each party has under the contract. The draft agreement must be approved by the Public Procurement Asset Disposal Board (hereinafter “the Board”) before it is distributed to pre-qualified bidders. The standard contract provisions will be modified to meet the unique circumstances of each individual PPP project.</p>
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)	No
Private Partner	Yes
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)	No regulatory basis
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
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)	No regulatory basis

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 other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
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)	No regulatory basis
16.5. Obtaining the required right of way: 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)	No regulatory basis
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 the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to have any specific qualifications.	Yes
Please elaborate and provide examples:	Section 40 of the PPAD Regulation titled Evaluation provides: (1) The accounting officer shall appoint an evaluation committee which shall comprise not less than three members.
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Section 55 of the PPAD Regulations provides: (3) The open domestic bidding method shall be open to all bidders following the advertisement of a bid notice in the Gazette and at least one newspaper of wide circulation in Botswana. Additionally, Section 56 provides: (2) An advertisement for the submission of bids for the open international bidding method shall be published in the Gazette and in the appropriate foreign or international publications or professional or trade journals with a wide international circulation and shall be open to all bidders.
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	http://ipms.ppadb.co.bw/login
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):	Section 33 of the PPADB Regulations states the following: "Unless otherwise determined by the PPADB, the minimum bidding period for open international competitive bidding is six weeks; four weeks for national competitive bidding and two weeks for selective tendering based on a shortlist."

and the time in calendar days:	42
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	No
Default	Yes
Relevant legal/regulatory provision (if any)	Sections 54-61 of the PPAD Regulations provide the following methods of tendering: open domestic tendering, open international bidding, restricted domestic bidding, restricted international bidding, quotations proposal, micro procurement, and direct procurement. Section 55 indicates, regarding open domestic bidding, "Except as provided for in these Regulations, a procuring or disposing entity shall use the open domestic bidding method."
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Sections 54-61 of the PPAD Regulations provide the following methods of tendering: open domestic tendering, open international bidding, restricted domestic bidding, restricted international bidding, quotations proposal, micro procurement, and direct procurement.</p> <p>Section 57, titled Restricted international bidding, provides:</p> <p>(1) The restricted international bidding method may only be used with the prior written authority of the Board, where-</p> <p>(a) the supplies, works or services are available only from a limited number of providers;</p> <p>(b) there is insufficient time for an open bidding procedure due to an emergency situation;</p> <p>(c) the estimated value of the procurement does not exceed the threshold stated in the guidelines;</p> <p>(d) other exceptional circumstances justify a departure from open bidding; or</p> <p>(e) foreign providers are included in the short-list of bidders.</p> <p>(2) The invitation to bid under sub regulation (1) shall be addressed to a limited number of potential bidders without advertising the opportunity in a bid notice in accordance with regulation 56 (2).</p> <p>58. Restricted domestic bidding</p> <p>(1) The restricted domestic bidding method may be used where-</p> <p>(a) the supplies, works or services are available only from a limited number of providers;</p> <p>(b) there is insufficient time for an open bidding procedure due to an emergency situation;</p> <p>(c) the estimated value of the procurement does not exceed the threshold stated in the procurement; or</p> <p>(d) other exceptional circumstances justify a departure from open bidding.</p> <p>(2) The invitation to bid under sub regulation (1) shall be addressed to a limited number of potential bidders without advertising the opportunity in a bid notice in accordance with regulation 56 (2).</p>

22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.4. Competitive dialogue: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.6. Direct negotiation with only one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>According to Article 52 of the PPAD Regulations, negotiations can be hold for direct procurement method after a written bid has been received. According to Section 61, the direct procurement method may be used where the selection of supplier is conducted on a sole supplier basis without completion. Section 61. about Direct procurement provides:</p> <p>(1) The direct procurement method may be used where the selection of supplier is conducted on a sole supplier basis without completion, such as where-</p> <p>(a) there is insufficient time for any other procurement method due to an emergency situation;</p> <p>(b) the supplies, works or services are available from only one provider;</p> <p>(c) an existing contract could be extended for additional supplies, works or services of a similar nature and no advantage could be obtained by further competition, provided the prices on the extended contract are reasonable;</p> <p>(d) additional supplies, works or services are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional supplies, works or services from the original supplier, if the prices of the additional contract are reasonable;</p> <p>(e) it is essential or preferable to purchase additional supplies, works or services from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable; or</p> <p>(f) it is justified in the circumstances.</p> <p>(2) When direct procurement is used under paragraphs (c), (d) or (e) of sub regulation</p> <p>(1) the value of the new supplies, works or services shall generally be less than the value of the original or existing contract and the original contract shall have been awarded through a competitive process.</p>

	<p>(3) A procuring entity shall use the appropriate documents, from the documentation issued by the Board, modified as necessary for the requirements of the procurement.</p> <p>(4) A direct procurement contract shall be in writing in a contract form as provided in the documentation referred to under sub regulation (3).</p> <p>(5) The procuring entity shall not commence any procurement process under the direct procurement method prior to the Board signifying its-</p> <p>(a) acceptance of the full justification given by the Contracts Committee for the necessity for the use of method; and</p> <p>(b) approval of use of the method.</p> <p>(6) The procurement process, under direct procurement, shall be subject to the procurement requirements, as far as practicable, provided in Part III.</p> <p>(7) The Board may award a bid for a procurement under this regulation if it is satisfied that the procurement has been sufficiently demonstrated to be of value for money.</p>
22.7 Other. Specify:	Quotations proposals procurement and Micro procurement
Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Section 59 of the PPAD Regulations provides that in quotations proposals procurement, a written bidding document is addressed to a limited number of potential bidders without publicly advertising the opportunity. Additionally, Section 60 provides that in the micro procurement method, the selection of a supplier shall be conducted on a sole supplier basis without competition and without the requirement of bid.
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 Section 53 of the PPAD Regulations: (1) The bidding documents shall state the procedure to be followed for the award of the contract
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/shortlisting 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):	Section 28 of the PPAD Regulations states that, a pre-qualification notice, within the tendering documents, shall contain a statement of the scope of the procurement, clearly giving the necessary details of the requirements and the criteria for pre-qualification.
22.10. Based on your experience, is it always the	Yes

case that the specified criteria are respected in practice?	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	The prequalification criteria specified in the tender documents are always respected in practice in order to make such information available to all the bidders
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):	<p>Section 34 of the PPAD Regulations titled “Clarification of bidding documents”, provides:</p> <p>(1) Bidding documents shall stipulate the date after which bidders may not seek clarification of the bidding documents.</p> <p>(2) The date to be stipulated under sub regulation (1) shall be determined to allow adequate time for all bidders to receive and study the bidding documents.</p> <p>(3) Any addendum to a bidding document shall be communicated promptly, in writing, to all bidders who purchased or were issued with bidding documents, in order to provide for adequate opportunity for bidders to seek clarification and to obtain necessary responses in accordance with regulation 34 (1).</p> <p>(4) An addendum to a bidding document shall be issued in writing and the same information shall be sent to all prospective bidders.</p> <p>(5) Any extension of a bidding period shall be communicated promptly, by publication of a notice in the Gazette.</p> <p>(6) In the event of a conflict between the content of the information contained in the tender notice and that which is contained in the bidding document, the information contained in the bidding document shall take precedence.</p>
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):	No regulatory basis
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:	The information regarding clarification of the public procurement notice are always disclosed to all potential bidders in practice in Botswana
If no, please elaborate:	n/a

24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>Section 31 of the PPADB Regulations provides the conditions for pre-bid meeting. They may be held to enable potential bidders to seek clarification or to view a project site.</p> <p>The regulation provides: (1) A procuring entity may hold pre-bid meetings to-</p> <p>(a) allow potential bidders to either seek clarification; or</p> <p>(b) have access to project sites.</p> <p>(2) Arrangements for pre-bid meetings shall be included in the bidding documents.</p> <p>(3) A potential bidder shall be given not less than 14 days notice of the pre-bid meetings, and, where appropriate, such notice period shall be extended to accommodate international methods of procurement.</p> <p>(4) A pre-bid meeting shall be held for such time as is reasonable for the particular bid, to enable bidders to consider any additional information that may be necessary in preparing their bids.</p> <p>(5) The Secretary to the Board shall prepare minutes for all pre-bid meetings and copies of the minutes shall be provided to all providers who purchased or were issued with the bidding documents.</p> <p>(6) Pre-bid meetings shall be managed by the procuring entity.</p>
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?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to the Section 31(5) of the PPADB Regulations, the secretary to the board shall prepare minutes for all pre-bid meetings and copies of the minutes shall be provided to all providers who purchased or were issued with the bidding documents.</p>
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	<p>Yes</p>
If yes, please specify:	<p>Disclosure of information about the results of the pre-bid conference is always done in practice in Botswana</p>
If no, please elaborate:	<p>n/a</p>
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?	<p>Yes</p>

If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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 the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 36 of the PPAD Act states that “in the evaluation and adjudication of a bid, no factor outside those explicitly stated in the bidding package shall be taken into account by the evaluators or the adjudicators in arriving at a recommendation or in making an award, unless there are extenuating reasons to use additionally, an industry standard or best practice. Additionally, Section 32 of the PPAD Regulations indicate that the selection of bidders from a register of providers shall be conducted to allow for equal opportunity of selection to all registered providers. Finally, section 53 states that the bidding documents shall state the procedure to be followed for the award of the contract, and according to article 64, the bidding documents shall contain the evaluation methodology and criteria.
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.	Yes
Please specify and provide the relevant legal/regulatory provisions (if any):	Regulation 61 of the PPADB) Regulations permit direct appointment method where the selection of supplier is conducted on a sole supplier basis without completion.
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
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):	Publication in the Daily News newspaper and PPADB website www.ppadb.co.bw
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	www.ppadb.co.bw
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):	According to section 86 of the PPADB Act, the PPAD Board has obligation to advertise tenders being invited, bids received, and award decisions.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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 51 of PPADB Regulations, in the case of negotiations under competitive methods, negotiations with a bidder can only be done after a preferred bidder is selected and a negotiation document is approved by the Board, Ministerial Committee, or District Tender Committee. If negotiations are unsuccessful, the original bidder must be informed of the reasons for termination of the negotiations. Once negotiations with the next ranked bidder are commenced, the procuring authority is not permitted to reopen earlier negotiations.
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	Restriction of negotiations with the selected bidder between the award and the signature of the contract is respected in practice in Botswana
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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	n/a
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including	n/a

all its annexes and appendixes	
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	n/a
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Sections 88-94 of the PPP Policy provides the obligation to establish a contract management team and describe its characteristics and procedure.</p> <p>88. The Institution must establish a contract management team. In recognition of the long-term nature of the PPP, the Institution must put in place both knowledge and succession management procedures.</p> <p>89. The stages of contract management begin with the procurement processes, where contract management requirements are considered during the drafting of the bid documents, including the PPP agreement, continue during the development stage, where the infrastructure is designed, financed and constructed and conclude during the delivery and exit stages where the services are provided and the necessary transition matters addressed at expiry, where the Institution takes back the responsibility for providing the service.</p> <p>90. PPP agreements will require regular reporting by the private party on the deliverables as a pre-requisite to receiving payment.</p> <p>91. Most PPP agreements will experience changes that must be managed, per the procedures described in the PPP agreement. Special attention must be paid to changes during the construction of the infrastructure, as they may affect the costs of services to be provided.</p> <p>92. Performance management during the delivery phase requires confirming that the outputs are delivered. The Institution must take care to focus on the</p>

	<p>delivery of the outputs and how they were delivered. Performance management focuses on:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Establishing service levels that constitute output delivery; <input type="checkbox"/> Enforcing payment mechanisms, including payment certification and penalty assessment; <input type="checkbox"/> Reviewing the financial performance and position of the private party against forecasts; <input type="checkbox"/> Ensuring that all monitoring obligations by either party are met; <input type="checkbox"/> Monitoring compliance with regard to insurance, security and safety systems; <input type="checkbox"/> Managing all interfaces between the private party and the Institution; <input type="checkbox"/> Ensuring that the dispute resolution processes are promptly and properly effected; <input type="checkbox"/> Monitoring and correcting all instances of non-compliance by the private party; <input type="checkbox"/> Establishing contingency plans for private party default; <input type="checkbox"/> Managing all the changes that will occur; and <input type="checkbox"/> Dealing with all end-of-contract matters, especially those concerned with the condition of assets upon expiry of the agreement. <p>93. Quality management is a prime responsibility of the private party, and the Institution must ensure the private party discharges that responsibility. Where private sector financing is involved, the Institution should liaise with the private party's financiers.</p> <p>94. The Institution must prepare an exit strategy, in coordination with the private party to ensure the Institution's capacity to take over service provision upon agreement expiry. PPP contracts may provide for an extension of the term of the PPP contract.</p>
<p>41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team</p>	<p>Yes</p>
<p>Relevant legal/regulatory provisions (if any):</p>	<p>According to Section 88 of the PPP Policy: The Institution must establish a contract management team. In recognition of the long-term nature of the PPP, the Institution must put in place both knowledge and succession management procedures.</p>
<p>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</p>	<p>Yes</p>
<p>Relevant legal/regulatory provisions (if any):</p>	<p>Section 89 of the PPP Policy indicates that "the stages of contract management begin with the procurement processes, where contract management requirements are considered during the drafting of the bid documents, including the PPP agreement, continue during the development stage, where the infrastructure is designed, financed and constructed and conclude during the delivery and exit stages where the services are provided and the necessary transition matters addressed at expiry, where the Institution takes back the responsibility for providing the service."</p>

Elaboration of a PPP implementation manual or an equivalent document	No
Relevant legal/regulatory provisions (if any):	n/a
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):	No regulatory basis
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	Yes
Relevant legal/regulatory provisions (if any):	<p>Section 92 of the PPP Policy provides: Performance management during the delivery phase requires confirming that the outputs are delivered. The Institution must take care to focus on the delivery of the outputs and how they were delivered. Performance management focuses on:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Establishing service levels that constitute output delivery; <input type="checkbox"/> Enforcing payment mechanisms, including payment certification and penalty assessment; <input type="checkbox"/> Reviewing the financial performance and position of the private party against forecasts; <input type="checkbox"/> Ensuring that all monitoring obligations by either party are met; <input type="checkbox"/> Monitoring compliance with regard to insurance, security and safety systems; <input type="checkbox"/> Managing all interfaces between the private party and the Institution; <input type="checkbox"/> Ensuring that the dispute resolution processes are promptly and properly effected; <input type="checkbox"/> Monitoring and correcting all instances of non-compliance by the private party; <input type="checkbox"/> Establishing contingency plans for private party default; <input type="checkbox"/> Managing all the changes that will occur; and <input type="checkbox"/> Dealing with all end-of-contract matters, especially those concerned with the condition of assets upon expiry of the agreement.
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):	Section 5.10 of the PPP Policy indicates that “PPP contract implementation requires proactive management of the relationship between the Institution and the private party. The Institution must establish a contract management team, ideally comprising of some members of the project committee, as they will possess the institutional knowledge of the project and be familiar with all of the risks that must be managed going forward.”
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):	In the Annexure 3 of the PPP Policy, we read in the Contract Management section: (1) Project implementation (e.g. construction) commences. Progress is monitored; and (2) Contract is managed using contract management plan to measure service delivery against contracted standards.
42.1. If yes, is the PPP contract construction performance information made available to the public?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	n/a
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract	Yes

implementation after construction?	
If yes, please provide the relevant legal/regulatory provisions (if any):	In the Annexure 3 of the PPP Policy, we read in the Contract Management section: (1) Project implementation (e.g. construction) commences. Progress is monitored; and (2) Contract is managed using contract management plan to measure service delivery against contracted standards.
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	Yes
Relevant legal/regulatory provisions (if any)	In the Annexure 3 of the PPP Policy, we read in the Contract Management section: ... (2) Contract is managed using contract management plan to measure service delivery against contracted standards.
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	The PPP Policy (Sections 90 and 92) establishes the obligation of the private party to report information regarding their obligations, and the obligation of the management team to monitor the financial performance and position of the private party.
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	The PPP Policy (Sections 90 and 92) establishes the obligation of the private party to report information regarding their duties, and the obligation of the management team to monitor the private's performance.
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 performance information made publicly available online?	No
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):	Clause 34 of the Standardized Contract provisions for PPP contract in the PPP Policy contains a clause for Assignment, Subcontracting and Changes in Shareholding and Control.
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).	No
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.	No
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.	<p>No</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
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>Section 95 of the PPAD Regulations titled: Contract amendments, provides:</p> <p>(1) Where a contract needs to be amended in order to change the original terms and conditions, a contract amendment shall be issued to the provider.</p> <p>(2) A contract amendment shall be prepared, approved and issued in the same manner as the original contract and shall require the prior approval of the Board or any of its competent committees.</p> <p>(3) A contract amendment shall be prepared by the procurement and disposal entity.</p> <p>(4) No contract amendment shall be issued prior to-</p> <p>(a) approval being obtained from the Board or any of its competent committees;</p> <p>(b) funding being committed in the full amount of the amended contract price over the required period of the revised contract; and</p> <p>(c) approval being obtained from all necessary bodies after the Board or any of its competent committees approval.</p> <p>(5) A contract amendment for additional quantities of the same items shall use the same unit prices as the original contract.</p> <p>(6) No individual contract amendment shall increase the total contract price by more than 15 per cent of the original contract price.</p> <p>(7) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 per cent of the original contract price.</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>According to the section 95 of the PPAD Regulations, (2) A contract amendment shall be prepared, approved and issued in the same manner as the original contract and shall require the prior approval of the Board or any of its competent committees... (4) No contract amendment shall be issued prior to-</p> <p>(a) approval being obtained from the Board or any of its competent committees;</p>

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.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the financial and/or economic balance of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to section 95 of the PPAD Regulations, ... (6) No individual contract amendment shall increase the total contract price by more than 15 per cent of the original contract price. (7) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 per cent of the original contract price.
46.3. Can the procuring authority unilaterally modify a PPP contract?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
47. Does the regulatory framework (including standard contractual clauses)	Yes

expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Annexure 2 of the PPP Policy: Clause 20 of the Standardized Contract provisions for PPP contract in the PPP Policy contains a clause for force majeure. It provides: Clause 20, Force Majeure, sets forth the processes for claiming relief due to the occurrence of a Force Majeure event. Also, Clause 28 provides: Compensation on Termination for Force Majeure, describes the process for determining payments to the private party on termination for Force Majeure.
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Refinancing.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Annexure 2 of the PPP Policy: Clause 32 of the Standardized Contract provisions for PPP contract in the PPP Policy contains a clause for refinancing of the debt. Specifically, "Clause 32, Audit Rights, Transaction Costs and Termination, describes the processes to be followed by the private party in the event it undertakes a refinancing of the debt applicable to the project."
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Clause 34 of the Standardized Contract provisions for PPP contract in the PPP Policy contains a clause for subcontracting. Specifically, "Clause 34, Assignment, Subcontracting and Changes in Shareholding and Control, sets forth the processes to be followed by either the private party or the Institution should it desire to assign any of its obligations under the PPP agreement and the procedures to be undertaken by the private party in terms of any change in control of the private party."
48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from	Yes

the implementation of PPP contracts?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Clause 35 of the Standardized Contract provisions for PPP contract in the PPP Policy contains a clause for dispute resolution. Specifically, “Clause 35, Dispute Resolution, sets forth the processes to be followed in terms of resolving disputes.”</p> <p>Additionally, Section 54 of the PPAD Act states the following regarding dispute resolution: “Dispute resolution - In the event of a dispute amongst procuring or disposing entities or between such entities and the contractors, the Board shall, when requested by the parties to such dispute, offer its good office to amicably resolve such disputes.”</p>
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/standard contractual provisions (if any)	<p>This matter is covered in sections 54 and 104 of the PPAD Act. Section 54 of the PPAD Act states the following regarding dispute resolution: “Dispute resolution - In the event of a dispute amongst procuring or disposing entities or between such entities and the contractors, the Board shall, when requested by the parties to such dispute, offer its good office to amicably resolve such disputes.” Also, “104. Requirements in respect of grievances A party to a dispute who does not get a satisfactory response to his or her grievances may refer a written complaint to the– (a) Independent Committee, after following the applicable review procedures of the Board; (b) High Court, after following the applicable review procedures of the Independent Committee.”</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/standard contractual provisions (if any):	<p>According to Section 20 of the Arbitration Act, “An award on a submission may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.”</p>
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	<p>New York State Convention applies.</p> <p>Additionally, according to the Recognition and Enforcement of Arbitral Awards Act, “An arbitral award made in a country which is party to the Convention on the recognition and Enforcement of Arbitral Awards may be enforced in Botswana.</p>

	Note that the latter will only apply if the award arises from a contractual relationship and if a similar award made in Botswana would be enforceable in such country.
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Botswana is a member of the ICSID convention
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?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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.	No
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.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Annexure 2-Summary of Standardized Contract provisions for Public Private Partnerships (Pg. 18), Clauses 24: Clause 24, Termination, describes the procedures for termination of the PPP agreement.
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Clause 26 of the Standardized Contract provisions for PPPs in the PPP Policy contains this provision.
Unsolicited Proposals	
34. Are unsolicited proposals in Botswana: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	Yes
Explicitly allowed by the legal framework?	No

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	According to section 87 of the PPP Policy, unsolicited bids are not allowed, “as they present a risk of entering into obligations that do not demonstrate affordability, transfer of significant risk to the private sector and value-for-money and may violate the principles of transparency, fairness and competition.”
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	n/a
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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.	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Section 6.13 of the PPP Policy provides: Although the process and procedures outlined above do not envisage unsolicited proposals, it is possible that such an approach might demonstrate substantial technical or financial innovation; or meet an unidentified need. For this reason, the PPP Policy does not exclude unsolicited proposals but rather requires that the fundamentals of a competitive and transparent procurement process must be preserved even in the case of unsolicited proposals. Furthermore, Section 5.2 of the PPP Policy states that “Government Sponsoring Institutions have the primary responsibility for identifying

	potential PPP projects as part of the National Development Plan (NDP) process and the annual budgetary process. PPP projects should be identified and prioritized using a cost benefit analysis that examines how well they address the NDP's development requirements. The PPP Unit shall co-ordinate this exercise to ensure that the NDPs include all projects that the Government should consider for procurement via the PPP method.”
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	No
Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
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.	No

39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a