

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN BRAZIL**NOTE**

Please note that Brazil has a dual regime of PPPs and Concessions. Both regimes are evaluated and scored separately in order to ensure the accuracy of the analysis. This document contains the data for **both** regimes. For your convenience, we have specified the page numbers for when the analysis for each regime begins and ends.

PPP	Concession
Page 2 to Page 37	Page 38 to Page 68

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN BRAZIL (PPP)

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The Brazilian regulatory framework defines three types of PPPs: common, administrative, and sponsored concession. Common concession is usually referred as “concession” by the Brazilian legislation, and hereinafter, and comprise agreements where the revenues of the concessionaire are mainly generated by tariffs paid by the end users. Administrative and sponsored concession are referred as “public-private partnership (PPP)” by the Brazilian legislation, and hereinafter. Under administrative concessions the State is the main or the end user of the services provided; while under sponsored concession, the concessionaire is remunerated both by tariffs and by a payment from the public partner.</p> <p>There is legislation at federal, state and local level. The current analysis focuses on legislation at federal level. The main legislation at federal level over Concessions is the Law 8.987/1995 (hereinafter “Concession Law”, and over PPPs is the Law 11.079/2004 (hereinafter “PPP Law”). Additionally, the Law 8.666/1993 (herinafter the “Law on Public Procurement”) covers procurement and administrative contracts in general, and regulates those issues not covered by the Concession Law and the PPP Law.</p> <p>Other additional legislation: (1) Law 13.334/2016 (hereinafter “PPI Law”) - Creates the Program of Partnerships of Investment and the PPI Council, (2) Decree 8.428/2015 - Expressions for interest and Unsolicited Proposals, (3) Law 12.766/2012 - Modifies the Law 11.079/2004, (4) Decree 6.037/2007 - Modifies the Decree 5.385/2014, (5) Decree 5.385/2005 - Regulatory Decree for the Steering Committee for the Federal Public-Private Partnership, (6) Law 9.074/1995) - Granting and Extension of Concession of Public Services.</p> <p>Finally, it must be considered that PPPs in some sectors are subject to a special legal regime due to their nature, being regulated by specific laws that, in some aspects, may differ from the regulatory framework indicated above, such as: ports (Port Concession Law No. 12,815 of 2013), Telecommunication (Law No. 9,472 of 1997), and Oil and Gas (Law No. 12,351 of 2010).</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	<p>Legislation section of the site of the Ministry of Planning (where the Federal PPP-Unit is located): http://www.planejamento.gov.br/assuntos/desenvolvimento/parcerias-publico-privadas/legislacao/legislacao-federal Legislation section of the site of the PPP-Unit of Sao Paulo: http://www.parcerias.sp.gov.br/Parcerias/Legislacao</p>
2.1. Are you aware of any reforms (in the regulatory	Yes

<p>frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</p>	
<p>Please describe:</p>	<p>(i) Provisional Measure No. 727 of May 12, 2016 was converted into Law No. 13.334 on September 13, 2016 (Hereinafter “PPI Law”). PPI Law created an institutional body at the presidential/ministerial level known as the Council of the Program of Investment Partnerships of the Presidency of the Republic (PPI Council). PPI Council was given the responsibility to select priority projects and to propagate the PPP agenda with all the involved governmental bodies. It has focused its actions mostly on selecting PPP projects and promoting them in international roadshows.</p> <p>(ii) Provisional Measure No. 752 of November 24, 2016 converted into Law 13.448 on June 5, 2017, establishing conditions for the renewal or the return of PPPs to the government for new procurement.</p>
<p>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</p>	<p>Yes</p>
<p>Please describe:</p>	<p>Provisional Measure No. 752 of November 24, 2016 converted into Law 13.448 on June 5, 2017, establishing conditions for the renewal or the return of PPPs to the government for new procurement.</p> <p>Some contributors indicated that there is currently a project to extend the scope of the Federal Infrastructure Guarantee Fund (Agencia Brasileira Gestora de Fundos in portuguese), so that the Federal Government can provide guarantees in PPPs carried out by Municipal Governments. This is currently not allowed. Additionally, the government of Brazil is revising PL 559/2013 to adopt a new Procurement Law, which will expedite the public procurement in Brazil.</p>
<p>3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>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</p>	<p>No</p>

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	Yes
If yes, specify and provide the relevant legal/regulatory provisions:	<p>Article 2, paragraph 4 of the PPP Law forbids the celebration of PPP Agreements (i) valued under R\$20 million, (ii) in which the period of service is under 5 years, and (iii) in which the only object is either (a) the supply of labor, (b) the supply and installation of equipment, or (c) the execution of public works.</p> <p>Additionally, oil and gas sectors are regulated separately by Law No 12,351 adopted on December 22, 2010 (http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Lei/L12351.htm).</p>
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes
If yes, please specify and provide the relevant legal/regulatory provision (if any):	Paragraph 3 of article 6 of the PPP Law details an exclusive rule for taxation as regards the determination of the net profit for purposes of calculating the taxable income (CSLL) and the calculation basis of the Contribution for PIS / Pasep and the Contribution for the Financing of Social Security (COFINS).
5. Please identify the PPP procuring authorities in Brazil and provide their website(s) (if available):	According to the regulatory framework, PPPs can be procured by any entity of the Government. Article 1 of the PPP Law applies to “all departments of the Government, special funds, autonomous government entities, public foundations, government-owned corporations, mixed-capital corporations and other entities controlled directly or indirectly by the Union, States, Federal

	<p>District and Municipalities.” This competence is often exercised differently in each infrastructure sector. For example, in Ports, the National Agency of Water Transportation (“ANTAQ”) is responsible for conducting the procurement of PPPs, but the Ministry of Transports (and formerly the Port Secretariat adjoint to the Civil Cabinet) is the official procuring authority. On the other hand, in land transportation (roads and railways), the National Agency of Land Transportation (“ANTT”) is the procuring authority and as well the one conducting the procurements. There are also differences in State and Municipal levels, where on occasions there was the preference for structuring a Public Company to conduct PPPs (e.g. the “SP Negócios” in the city of São Paulo).</p> <p>Regarding concessions, according to the article 2,I, of the Concession Law, the procuring authority is “the Union, the State, The Federal District or the Municipality, within whose competence the public service is object of the concession or permission.”</p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	<p>Yes</p>
If yes, please indicate its name, and its website (if available):	<p>PPPs are conducted in the frame of a PPP Program which is facilitated by a specialized government entity. In federal level, the PPP Committee (Comitê Gestor da PPP Federal)- is responsible for facilitating the Federal PPP program. The PPP Committee was created by the article 14,of the PPP Law and is further regulated by Decree 5.385/2005. A similar institutional arrangement is in place in some of the States and municipalities. For example: the Council of PPPs in the State of São Paulo (http://www.parcerias.sp.gov.br/), the PPP Unit in Minas Gerais (http://www.ppp.mg.gov.br/), and the PPP Unit in Espírito Santo (http://www.ppp.es.gov.br/) as well. In practice, some of these PPP entities, for instance Sao Paulo and Minas Gerias, also include common concessions in their portfolio.</p> <p>Additionally, the PPI Law created in 2016 the Investment Partnerships Program - PPI, and the PPI Council of the Presidency of the Republic, which has among its powers to exercise the powers attributed to the PPP Committee. In contrast to the PPP Committee the PPI Law explicitly includes in the functions of the PPI Council not only PPPs (i.e. administrative and sponsored concessions) but also common concessions.</p>
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	<p>Yes</p>
6.2 PPP capacity building for other public authorities.	<p>Yes</p>
6.3 PPP promotion among the public and/or private sectors	<p>Yes</p>

in national and international forums.	
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.	No
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>Article 2 of the The PPI Law of 2016 created the PPP Council and gave it some functions of the PPP Committee (created by the PPP Law of 2004). It also emphasized the following functions of the PPP Committee (literals II, III, and IV of the Article 14 of the PPP Law): enforce the procedures to develop PPP contracts, authorize the start of procurement processes and approve the tendering documents, and monitor the execution of contracts.</p> <p>(i) Functions of the PPP Committee: Pursuant to Article 3 of Decree 5.385/2014, the functions of a PPP Committee are: I. To propose to the PPI Council priority services to execute through PPPs (...), II. To enforce the procedures to develop PPP contracts, III. To approve the start of procurement process and their procedure, and contracts and their modifications, IV. To oversee the compliance of the contracts, (...) IX. To elaborate models for tendering documents and contracts (...)"</p> <p>(ii) Functions of the PPI Council: Article 7 of the PPI Law: "(PPI Council functions include): I. Give opinion to the President regarding the projects presented by governmental entities (...), II. Accompany the execution of the PPI program, (...) IV. Elaborate legislative proposals and guidelines to government entities, V. Exert the functions of a) the PPP Committee, b) the National Council of Transport Policies, c) the National Council of Decentralization (...)"</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 Article 10, I and III, of the PPP Law, the launching of any PPP project in Brazil requires the analysis and formal approval of the authority responsible for the financial and budgetary obligations that it will create. In

	case of a federal PPP, the Ministry of Finance would be responsible for such approval.
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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	Yes

procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	
If yes, please specify the relevant authority	<p>According to the PPI Law, the PPI council must give opinion, before the consideration of the president, of the proposals presented the governmental institutions. The Council membership includes the (i) Chief-Ministry of the General Secretariat of the Presidency, (ii) Chief-Ministry of the Civil House, (iii) Ministry of Finance, (iv) Ministry of Transports, (v) Ministry of Mining and Energy, (vi) Ministry of Planning, (vii) Ministry of Environment, (viii) President of the Brazilian Bank for Social and Economic Development, (ix) President of the Federal Bank, and (x) President of the Bank of Brazil.</p> <p>Further, according to the PPP Law, the PPP Committee approves any PPP project. The Committee's membership includes a representative of the Ministry of Planning, Budget and Management and the Civil House of the Presidency of the Republic. The launching of a PPP procurement process must be preceded by the motivated opinion of the Ministry of Planning, Budget and Management (on the appropriateness of the PPP project) and of the Ministry of Finance (on the financial viability of the PPP project). Along the approval of the PPP committee and the Ministry of Finance mentioned above, the launching of the PPP procurement is accompanied by the State's Attorney Office (Advocacia Geral da União) opinion, which ensures the legal compliance of the procedure.</p> <p>Finally, all federal concessions programs (including PPP) can be audited by the Federal Auditing Court (Tribunal de Contas da União), such court is able to determine the modification of the preceding taken in a specific concession or PPP project. even though the prior approval of the auditing court is not mandatory, it is highly recommended.</p>
and provide the relevant legal/regulatory provisions (if any):	<p>Article 3 of Decree 5.385/2014: "(PPP Committee functions include) (...) III. Approve the start of procurement process and their procedure, and contracts and their modifications, IV. Oversee the compliance of the contracts, (...)"</p> <p>Article 7 of the PPI Law: "(PPI Council functions include): I. Give opinion to the President regarding the projects presented by governmental entities (...)"</p>
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 3 of Decree No. 5.385/2005 provides that the CGP is responsible to "approve the convening instruments and contracts and amendments thereto".</p> <p>Article 3 of Decree No 8.791/2016 provides that the Council of Investment for Partnership Program ("CPPI") is responsible to "approve the convening instruments, contracts and amendments thereto".</p>
10. Does the procuring authority use transaction	<p>Yes</p>

advisors during the PPP project cycle?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 67 of the Public Procurement Law: The execution of the contract must be accompanied and supervised by a representative of Administration specially designated. It is permitted to engage third parties to assist and provide information pertinent to the project. Contracting transaction advisors remains optional. While advisors may be contracted under the regular procurement procedure of Public Procurement Law above, the authorities may opt to execute direct agreements with specialized entities with outstanding and singular renown (i.e. IFC) under the exemption from contracting rule of Article 25, II of Public Procurement Law.</p>
11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>According to Article 10 of the PPP Law any PPP project has to be integrated on the annual budgetary law and consider the Budget Guidelines Law (article 10.III). Also, the object of the PPP project has to be included in the Pluriannual Investment Plan of the corresponding sector (article 10.V). Both provisions suppose the formal elaboration of technical and financial studies on the PPP investments and their consistency with other public projects. Moreover, according to PPI Law, the Investment Partnerships Program will define the long term policies to the infrastructure investments.</p>
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>

The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	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?	No
If yes, please specify:	n/a
If no, please elaborate:	Contributors have diverse opinions. According to some, the provisions of the regulatory framework are general observed but others point out to situations in which despite complying with the formalities the actual integration of PPP projects does not happen in practice.
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	Yes
Relevant legal/regulatory provision (if any)	Article 4 of PPP Law: The procurement of PPPs will consider the following guidelines: (...) VII financial sustainability and socioeconomic benefits of the projects (...)
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	A majority of contributors answering the question do not confirm the practice
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and	Yes

implicit, direct and contingent liabilities)	
Relevant legal/regulatory provision (if any)	Affordability assessments are required before the procurement of a PPP and regulated by different sections of article 10 of the PPP Law. According to Article 10.I.b of the PPP Law the approval of the CGP will be based on a study showing that the cost incurred or increased by the PPP will not affect the adopted fiscal targets. Article 10.II requires the “preparation of the budget estimate and financial impact of the PPP contract”. Article 10.III requires the procuring entity to ensure that the cost of the PPP are in line with the Budgetary Guidelines Law and included in the yearly budget. Finally, article 10.IV requires to prepare an “estimate of a sufficient flow of public resources to meet the obligations undertaken by the procuring authority, every fiscal year during the term of the PPP contract.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Most of the contributors confirmed that affordability assessments are required before the procurement of a PPP.
12.3. Risk identification, allocation and assessment (risk matrix)	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:	Contributors answering the question confirm this practice
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)	Article 10.I of the PPP Law requires the approval to procure a PPP to be based on a study showing among others: “the convenience and the opportunity of procuring a PPP by identifying the reasons justifying the choice of the form of public-private partnership”
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a

Is the assessment done in practice?	No
Details:	There is no consensus on contributors regarding whether this study is always conducted in practice.
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	Article 4.VII of the PPP Law indicates that PPPs should be based on their financial sustainability.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors indicate that financial viability assessment is done in practice and reviewed by internal and external audit control bodies.
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.7. Environmental impact assessment	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a

Is the assessment done in practice?	n/a
Details:	n/a
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)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 10 of the PPP Law established the information that must be disclosed to private parties in the request for proposals, establishing that the contracting of the public-private partnership shall be preceded by a bidding procedure as a competitive tendering [modalidade de concorrência], and the procedure shall require: I - authorization of the pertinent authority, based on a technical study showing: a) convenience and opportunity of the contract, by identifying the reasons that justify the choice for the public-private partnership modality; b) the created or increased expenses shall not affect the targets for tax results set forth in the Schedule referred to in § 1, article 4, of Complementary Law No. 101, of May 04, 2000, and their financial consequences should be set off by either the permanent increase in revenues or the permanent reduction of expenses in the next periods; and c) when applicable, in accordance with the rules issued in the form of article 25 hereof, the compliance with the limits and conditions arising from the application of articles 29, 30 and 32, of Complementary Law No. 101, of May 04, 2000, by the obligations contracted of the Public Administration associated with the scope of the agreement; II - preparation of an estimate of the budgetary-financial impact in the fiscal years during which the public-private partnership agreement is to be effective; III - a statement by the expense manager establishing that the obligations contracted by the Public Administration during the agreement term are compatible with the budgetary directives law, and that they are set forth in the annual budgetary law; IV - estimate of a flow of public funds sufficient to meet, during the agreement effectiveness and per fiscal year, the obligations contracted by the Public Administration; V - its scope must be set forth in the multiannual plan in force to which the agreement is related; VI - submission of the draft of the call for tender and the agreement, to public inquiry through its publication in the official press, in large circulation newspapers and electronic means, which should inform the justification for contracting, the identification of its purpose, the agreement effectiveness, the estimated contractual amount, giving at least thirty (30) days for receiving suggestions, the deadline of which shall be at least seven (07) days before the date established for the publication of the call for tender; and VII - prior environmental license or enactment of directives for the environment licensing of the undertaking, in the form of regulations, whenever the agreement purpose so requires.</p>
and specify which of the assessments are included in	Technical studies, studies of economic impact and viability of the PPP project

the request for proposals and/or tender documents:	
13.1. Are the assessments published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Federal Law No. 12,527 of 2011, which regulates the access to public information in Brazil, the relevant documents for the tender must be published by the Procuring Authority in its relative website (Municipalities with less than 10,000 inhabitants are not subject to such obligation)
specify the website	Procuring authority website; http://portal.impresanacional.gov.br/
please specify which of the assessments are published online:	Technical studies, studies of economic impact and viability of the PPP project
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 11 of the PPP Law the procuring authority has the obligation to include a draft of the contract in the request for proposals.
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Federal Law No. 12,527 of 2011, which regulates the access to public information in Brazil, the relevant documents for the tender must be published by the Procuring Authority in its relative website (Municipalities with less than 10,000 inhabitants are not subject to such obligation)
and please specify the website:	Tender documents are customarily published on the procuring authority website.
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
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	No
Private partner with facilitation role assigned to	No

the procuring authority (or other Government entity)	
To be established in the contract	Yes
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	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	According to the article 10, 7th paragraph, of the PPP Law the procuring authority can only launch the procurement for a PPP project either if the environmental permit (licença prévia) has been obtained, or if the environmental guidelines (diretrizes ambientais) have been established. In the latter case, the concessionaire will be responsible for obtaining the environmental permits during the performance of the PPP contract.
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)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.5. Obtaining the required right of way: Procuring	No

authority (or other Government entity)	
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
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.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 51 of Public Procurement Law provides only that proposals will be processed and judged by permanent or special committee of at least 3 (three) members, at least two (2) of qualified servants belonging to the permanent staff of the administration bodies responsible for the bidding.
The bid evaluation committee members are not required to have any specific qualifications.	No
Please elaborate and provide examples:	n/a
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):	Pursuant to article 21 of the Law on Public Procurement, any public bid must be published in the Official Gazette of the Federal Executive (in case of federal PPPs and Concessions) and in widely circulated newspapers.
19.1. If yes, is the public procurement notice published online?	Yes

If yes, please specify the website:	http://portal.in.gov.br/; website of the respective procuring authority
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):	Article 21, the Law on Public Procurement: 45 days, when the qualification uses technical criteria, 30 days when the criteria is exclusively price.
and the time in calendar days:	45
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)	Article 10 of PPP Law establishes “the procurement of a public-private partnership will be preceded by a competitive tender, and the opening of the bidding process will be conditioned to: (...)” Since article 12 establishes just as a possibility the introduction of a prequalification stage, the open tender in single stage is considered as the default procedure.
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 12 of PPP Law states that “(...) the bidding may be preceded by a qualification stage of technical proposals, the bidders that do not reach the minimum score will be disqualified, which will not participate in the following stages (...)”
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 12 of PPP Law states that “(...) The competition for the contracting of public-private partnerships shall comply with the procedure established in the current legislation on bids and administrative contracts and also to the following: I the judgment may be preceded by a qualification stage of technical proposals, the bidders that do not reach the minimum score will be disqualified, which will not participate in the following stages”

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	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	No
Available	n/a
Default	n/a
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 40 of the Law on Public Procurement, the request for proposals must provide all the details of the tender.
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):	Pursuant to article 114 of the Law on Public Procurement, "the pre-qualification shall be subject to the requirements of this Act relating to competition, the convening of stakeholders, the procedure and the analysis of the documentation".
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Contributors confirm that the specified criteria are respected in practice.

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):	Article 39 of the Law on Public Procurement establishes that for large projects the bidding process will begin, necessarily, with a public hearing providing bidders with access to all relevant information and to manifest all concerned. Article 40.VIII of the Law n° 8.666/1993 establishes that the procurement notice must include the locations, times and access codes distance access to the data, information and clarifications to the tender conditions. Also, according to Article 10.VI of the PPP Law the drafts of the tender documents must be opened for public consultation at least 37 days prior to publication of the definitive request for proposals.
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):	Article 40.VIII of the Law on Public Procurement establishes that the procurement notice must include the locations, times and access codes to access to the data, information and clarifications to the tender conditions.
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:	Contributors confirm that the disclosure of the responses to the clarifications is done in practice
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Article 39 of the Law on Public Procurement establishes that for large projects the bidding process will begin, necessarily, with a public hearing. Article 10, VI of the PPP Law sets out that, prior to the commencement of the bidding procedure, the procuring authority has the duty to submit the draft documents and preparatory studies to public audiences, as to allow potential the bidders' manifestation on the content of such documents.
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the	Yes

results of the pre-bid conference to all bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	According to our contributors, when a public consultation is conducted, the results of it are public as well.
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	The presentation of a financial model along with the proposals is not a requirement in all the cases comparable to the case study assumptions (it may be required, but is not mandatory). Some contributors indicate that the Federal Government discourages bidders to present a financial model. Instead, the practice is for a bidder to present a simple letter from a financial institution with an acceptable rating to declare that it has examined the bidder's financial model and that it deems it acceptable.
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):	According to Article 12 of the PPP Law the examination of the proposals will be done on the basis of the requirements, parameters and outcome indicators relevant to the object, defined clearly and objectively in the public procurement notice. Same provision is contained in article 45 of the Law on Public Procurement.
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	No

authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	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.	Yes
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):	Article 43, item VI and Article 109 of the Law on Public Procurement also indicates that the award notice is to be published in the official journal of the Administrative entity.
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	http://portal.in.gov.br/
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):	Pursuant to the Law on Public Procurement, art. 63, all procurement documents shall be made available to the public, upon request.
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	<p>The regulatory framework does not provide any minimum information standards, but requires that any third party or stakeholder may have access to the procurement documents. The result of the PPP procurement process shall be recorded in the minutes of meeting of the evaluation committee (comissão julgadora), pursuant to article 43 of the Law on Public Procurement. In general, every single act of the procuring authority must be duly justified, in accordance to Federal Law No. 9.784/1999 (Federal Administrative Procedures). The decision regarding the result of the PPP procurement process in no exception to that principles, and the right to access such decision implies the access to its grounds for the selection of the winning bid.</p>
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?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
and the time in calendar days:	<p>n/a</p>
30.1. Is the standstill period set out in the notice of intention to award?	<p>n/a</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
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?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Law No. 11,079/2004, Article 12, item II, the evaluation committee shall establish the evaluation criteria as price, technical or both. In case of the public procurement notice stipulates technical or technical and price criteria, the committee should negotiate the price with the selected bidder with reference to the lowest price presented among the classified bidders. However, in hypothesis of unsuccessful negotiation, the same procedure shall be applied, in succession, with other ranked bidders in compliance with the Article 46, II, of the Law on Public Procurement. However, in general the Brazilian regulatory framework do not contemplate any sort of negotiation between the selected bidder and the procuring authority between the award and the signature of the contract. The general principle adopted in Brazilian law is that the bidding documents are not to be changed during the bidding process, and that provision includes the contract and its economical terms, since they are part of the bidding documents. That principle is outlined</p>

	in articles 3 and 41 of the Federal Law nº 8,666/1993. Any substantial modification on the bidding documents - including the contract - supposes the reedition of the bidding procedure, as established in the article 21, 4th paragraph, of the Federal the Law on Public Procurement.
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	Contributors confirm that the restriction is respected in practice
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 61, sole paragraph, of the Federal the Law on Public Procurement provides that every contract must be published through the official means in order to establish a condition to ensure its efficiency. Publishing an extract of the signed contract is a pre-condition for it to produce effects. Also, according to article 63 of the Law on Public Procurement, all administrative contracts derived from public bidding must be kept available. Furthermore, the Public Transparency Law (Law No. 12,527/2011), art. 8, § 1 and §2, provides that administrative contracts must be made public by the respective competent authority.
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	Yes
Publication of a summary of the PPP contract without publishing the full PPP contract	No
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?	Yes
If yes, please specify the website:	http://portal.in.gov.br/

32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 61, sole paragraph, of the Public Procurement Law provides for a mandatory publication of summarized contract and its amendments in the official press, this publication is an indispensable condition for its effectiveness, shall be provided by the Administration by the fifth business day of the month following the date of its signature, to take place within twenty days of that date, regardless of their value, even without charge, except as provided in art. 26 of this Law.
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):	Article 15 of the PPP Law establishes that the competent ministry or regulatory agency must supervise PPP contracts. Also, article 67 of the Law nº 8.666/1993 establish more broadly that the implementation of any contract must be accompanied and supervised by a specially designated representative of the procuring authority.
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	Yes
Relevant legal/regulatory provisions (if any):	According to the Article 67 of the Public Procurement Act, performance of the contract shall be monitored and supervised by a representative of the Specially designated administration, allowing the contracting of third parties to assist and subsidiary in information relevant to that allocation.
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	No
Relevant legal/regulatory provisions (if any):	n/a
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)	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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	Yes
Please elaborate and provide examples:	There are no specific rules establishing any qualifications that the PPP contract management team members need to have. Article 67 of the Public Procurement Law only provides that the committee members have to be public servants.
42. Does the procuring or contract management authority establish a system for tracking progress and	Yes

completion of construction works under a PPP contract?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Art. 5 of PPP Law determines the basic clauses that must be contemplated in the PPP agreement, among which are: the allocation of risks between the parties, including those concerning fortuitous case, force majeure, government restrictions, and extraordinary economic unforeseen events; the rules of compensation and adjustment of the contractual amounts; the mechanisms to ensure the services are up to date; the fact that characterizes the cash default of the public partner; the forms and the periods of time to remedy them, and, whenever applicable, the form to enforce the guarantee; the objective criteria to evaluate the performance of private partner; the performance of an inspection of the reversible assets, when the public partner will be entitled to withhold the payments to the private partner, in the amount required to make up for any noncompliance found; and the schedules and deadlines to pay the funds to the private partner, during the investment phase of the project and/or after making the services available, whenever the circumstance in § 2, Article 6 occurs.
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 implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 7 II of the Federal Law 13.334/12016, the Investment Partnerships Program Council (IPPC) shall monitor the execution of the investment projects. Further, pursuant to Article 14 of the PPP Law the PPP Steering Committee (CGP) shall review the project implementation reports. Article 3 of Decree No. 5,385/2005 provides that CGP shall review implementation reports every six months. The project implementation reports shall be prepared by the public authority responsible for the PPP project. According to article 5.VII of the PPP Law, the PPP contract should also include the objective criteria to evaluate the performance of the private partner.
43.1. If yes, which of the following tools does it include (check all that apply)?:	No

Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	According to Article 31.III of the Federal Law No. 8,987/1995 PPPCo must provide the procuring authority with information regarding the delivery of the service, while article 23.XIV of the same Law mandates the contract to regulate the information to be provided. The mentioned provisions fully apply to PPPs since article 3 and article 5 of the PPP Law sets forth that articles 23 and 31 of Law No. 8,987/1995 will apply to PPP concessions.
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	Article 3 of Decree No. 5,385/2005 provides that PPP Steering Committee, currently the PPI, shall review the PPP implementation reports prepared by the public authority responsible for the PPP project every six months. Also, the same body must prepare and submit to the National Congress and Federal Audit Court an annual report regarding the performance of PPPs.
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?	Yes
If yes, please specify the website:	http://www.planejamento.gov.br/assuntos/parcerias-publico-privadas/projetos/projetos-federais
44. Are foreign companies prohibited from repatriating	No

the income resulting from the operation of a PPP project?	
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):	According to Article 9, 1st paragraph, of the PPP Law, Any change in the structure of the PPPCo is to be communicated to the Granting Authority, and any change that implies change in controlling interest is subject to prior authorization of the Granting Authority. The change in controlling interest supposes that the replacing entity meets the same juridical, economical and technical qualifications demanded in the procurement process. Each PPP contract may contain specific rules besides the one pointed above, such as the prohibition to change control in PPPCo during an initial period, or the exigence that one specific entity (for instance, the operator) remains in the controlling group for a certain time.
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.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	As expressly established by article 3 of the PPP Law, article 27 of the Concession Law applies to PPPs as well. Article 27 of the Concession Law and more broadly article 55 of the Law on Public Procurement provides that the private partner shall observe all qualifications required for the procurement phase throughout the life of the contract.
In other cases, flexibility to change the ownership	Yes

structure and/or assign the contract.	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 27 of the Concession Law and article 9 of the PPP Law that allows for the transfer of the PPP contract under previous authorization of the procurement authority. As expressly established by article 3 of the PPP Law, article 27 of the Concession Law applies to PPPs as well.</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>Article 57 of the Public Procurement Law, paragraph 1 provides that a change in the project execution, conclusion and delivery dates may be extended upon certain conditions (change in the project scope, unexpected event, interruption of the project works, increase in the quantities originally agreed, omission or delay from the public partner). Also, Article 65 of the same law provides the conditions on which contracts may be amended. Furthermore, Law 13,448/2017 provides for hypotheses and requirements for the renewal or the return of PPPs in transports sectors.</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>In case of renewal or return, the previous qualification issued by the PPI is required pursuant to Article 2 of the Law 13,448/2017.</p> <p>In fact, 'According to the PPI Law, the PPI council must give opinion, before the consideration of the president, of the proposals presented the governmental institutions. The Council membership includes the (i) Chief-Ministry of the General Secretariat of the Presidency, (ii) Chief-Ministry of the Civil House, (iii) Ministry of Finance, (iv) Ministry of Transports, (v) Ministry of Mining and Energy, (vi) Ministry of Planning, (vii) Ministry of Environment, (viii) President of the Brazilian Bank for Social and Economic Development, (ix) President of the Federal Bank, and (x) President of the Bank of Brazil.</p> <p>Further, according to the PPP Law, the PPP Committee approves any PPP project. The Committee's membership includes a representative of the Ministry of Planning, Budget and Management and the Civil House of the Presidency of the Republic. The launching of a PPP procurement process must be preceded by the motivated opinion of the Ministry of Planning, Budget and Management (on the appropriateness of the PPP project) and of the Ministry of Finance (on the financial viability of the PPP project). Along the approval of the PPP committee and the Ministry of Finance mentioned above, the launching of the PPP procurement is accompanied by the State's Attorney Office (Advocacia Geral da União) opinion, which ensures the legal compliance of the procedure.</p> <p>Finally, all federal concessions programs (including PPP) can be audited by the</p>

	Federal Auditing Court (Tribunal de Contas da União), such court is able to determine the modification of the preceding taken in a specific concession or PPP project. even though the prior approval of the auditing court is not mandatory, it is highly recommended.
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.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 57 of the Law on Public Procurement allows the delivery dates to be extended in this case. Also, Article 65 of the same law provides the conditions on which there may be a change in scope: The contractor is obliged to accept under the same contractual conditions, additions or deletions that may be in the works, services or purchases, up to 25% (twenty five percent) of the updated initial value of the contract, and in the case private retirement building or equipment, up to 50% (fifty percent) for their additions. § 2 the No addition or deletion may exceed the limits set out in the preceding paragraph
A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 65 of the Law on Public Procurement provides that there may be a economic financial readjustment in order to rebalance the risk between the private partner and the public partner.
A change in the financial and/or economic balance of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 57 of the Public Procurement Law provides: ... The execution, completion and delivery start periods allow extension, keeping the other clauses of the contract and ensure the maintenance of its economic and financial balance, when any of the following is duly filed in the proceedings:</p> <ul style="list-style-type: none"> I- change of the project or specifications, by the Administration; II- supervenience exceptional or unforeseeable event, which is outside the control of the parties, fundamentally the conditions for the performance of the contract; III- interruption performance of the contract or decrease in the rate of work by order and in the Management; IV- increase of the quantities initially provided for in the contract, within the limits permitted by this Law; ... <p>Furthermore, Article 65 provides that there can be modification of the Contract d) to re-establish the relationship which the parties initially agreed between the contractor's remuneration of the administration for the fair remuneration of the work, service or supply, aiming the maintenance the economic and financial balance contract, in the event of unpredictable or foreseeable events but with incalculable, delaying or impeding consequences of the execution of the adjusted, or, in case, of force majeure, fortuitous event</p>

	or fact of the prince, configuring extraordinary economic and extra-contractual terms.
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Article 57, paragraph 1 of the Public Procurement Law, The execution, completion and delivery start periods allow extension, keeping the other clauses of the contract and ensure the maintenance of its economic and financial balance, when any of the following is duly filed in the proceedings: I- change of the project or specifications, by the Administration; ...
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 57 of the Public Procurement Law, the price or tariff will always be adjusted by an inflation index and can be modified in order to preserve original financial-economic balance.
46.3. Can the procuring authority unilaterally modify a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Public Procurement Law, Article 58, public authority can modify contracts unilaterally to better adapt to public interest purposes, subject to the rights of a contractor.
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 5.III of the PPP Law, PPP contracts must contain provisions regarding risk allocation in case of force majeure events. Additionally, Force Majeure is regulated in Article 65 of the Public Procurement Law
Material Adverse government action .	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 5.III of the PPP Law also expressly provides that the PPP contract must regulate material adverse government action.
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	The same article 5.III, of the PPP Law provides that the PPP contract must regulate change in the law when allocating the risks between the parties.
Refinancing.	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 5, IX, of the PPP Law provides that the PPP contract must contemplate the possibility of refinancing and, in that case, the economic gains have to be shared between the concessionaire and the Administration.
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 72 of the Public Procurement Law sets out that the contracted party may subcontract the agreement's object to the limit specified in the respective procuring documents.
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?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	The PPP contracts can contain a clause of a private dispute resolution mechanism, such as arbitration, as established in article 11, III, of the PPP Law. Arbitration is not mandatory and it is a choice of the procuring authority when it designs the contract. If arbitration is adopted, it must follow the requirements settled in those articles, namely to adopt Portuguese as language, and to be held in Brazil.
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	No
Investor-State Dispute Settlement (ISDS)	No
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	PPP Law Art 11 (III) makes a reference to the use of private dispute resolution mechanisms, including arbitration, to be carried out in the Brazil and in Portuguese, under Law no the 9.307, of September 23, 1996 to resolve conflicts arising out of or relating to the contract.
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes
If yes, please provide the relevant legal/ regulatory	Arbitration awards are enforceable by the local courts pursuant to Article 515, VII, of the Brazilian Civil Procedure Code (Federal Law No. 13,105/2015).

provisions/standard contractual provisions (if any):	
International arbitration	No
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
Investor-State arbitration	No
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
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?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 5, §2, I, of the PPP Law authorizes the procuring authority to include step-in right in PPP contracts. Article 27-A contains further regulation on the subject, namely describing the obligations that the lender must fulfill and the requirements he will have to meet, but each concession contract shall further regulate the matter. As expressly established in article 3 of the PPP Law article 27 of the Concession Law applies to PPPs stricto sense.
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly	Yes

regulates the lender step-in rights.	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 5, §2, I, of the PPP Law authorizes the procuring authority to include step-in right in PPP contracts. Article 27-A contains further regulation on the subject, namely describing the obligations that the lender must fulfill and the requirements he will have to meet, but each concession contract shall further regulate the matter.</p> <p>As expressly established in article 3 of the PPP Law article 27 of the Concession Law applies to PPPs stricto sense.</p>
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):	<p>Article 35 of the Concession Law (that applies to PPPs when the matter is not regulated in the PPP Law) expressly establish the grounds for termination of a PPP contract, namely: (i) the mere end of the contractual period, (ii) redemption (early termination due to the public interest in reassuming the provision of the services), (iii) forfeiture (concessionaire's breach of contract), (iv) rescission (judicial termination due to the Administration's breach of contract), (v) annulment and (vi) bankruptcy or extinction of the concessionaire.</p>
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):	Article 35 of the Concession Law (that applies to PPPs when the matter is not regulated in the PPP Law) establishes that the termination of the PPP contract have the following consequences: (i) transfer of the public service to the Government, as well as (ii) the return of all the reversible assets to the Government and (iii) application of the regime of compensations for the termination of the contract.
Unsolicited Proposals	
34. Are unsolicited proposals in Brazil : (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	Pursuant to Article 3 of the PPP Law and as regulated by the Federal Decree No. 8.428/2015, unsolicited proposals may be submitted to the public authorities by private persons or legal entities, in a process call “Procedimento de Manifestação de Interesse” (Private Interest Manifestation).
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	Articles 9, 10, 11 and 12 of Decree No. 8,428/2015 regulate the assessment of unsolicited proposals.
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	No

<p>procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	No regulatory basis
<p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p>	No
<p>Please elaborate and provide examples:</p>	n/a
<p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>The Brazilian regulatory framework establishes that once as unsolicited proposal is filed, the procuring authority has the obligation to issue a public call for proposals, in order to verify of there are other private parties interested in providing the studies for a PPP or common concession (article 1 and 3 of the Federal Decree No. 8,428/2015). The procuring authority issues the authorization to present projects, surveys, investigation and studies, and, once such studies are presented, the procurement authority processes their evaluation, according with the assessments above, according to the article 1, 4th paragraph, of the Federal Decree nº 8,428 of 2015. Once the studies are concluded, after the evaluation of the unsolicited proposals, the procuring authority is free to decide whether to initiate a competitive procurement procedure or not. Finally, any selected unsolicited proposal is followed by a public call for proposals, since pursuant to article 17 of Federal Decree 8.428/2015, the unsolicited proposal leads to a regular bidding process, with the exception that the unsolicited proposal's cost should be compensated during the public tender.</p>
<p>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides</p>	Yes

the proponent) to prepare their proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 21 of the Public Procurement Law provides that the minimum term until the receipt of the proposals or the accomplishment of the event will be, inter alia, 45 (forty-five) days for the bidding of the best technical or technical type and price, or when the contract is an unsolicited proposal
and the time in calendar days:	45
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).	Yes
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):	Brazilian legislation provides that the original proponent will be reimbursed for the projects development cost by the winner of the public procurement (as a condition to sign the PPP contract). The possibility of reimbursement of the developer's fee is settled in article 21 of the Federal Law No. 8,987/1995. Article 17 of the Federal Decree No. 8,428/2015 provides that, if the unsolicited proposal studies are used for the bid, the bidding documents must explicitly contain the obligation of reimbursement for the project development cost by the winner of the procurement process.

**PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN BRAZIL
(CONCESSION)**

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The Brazilian regulatory framework defines three types of PPPs: common, administrative, and sponsored concession. Common concession is usually referred as “concession” by the Brazilian legislation, and hereinafter, and comprise agreements where the revenues of the concessionaire are mainly generated by tariffs paid by the end users. Administrative and sponsored concession are referred as “public-private partnership (PPP)” by the Brazilian legislation, and hereinafter. Under administrative concessions the State is the main or the end user of the services provided; while under sponsored concession, the concessionaire is remunerated both by tariffs and by a payment from the public partner.</p> <p>There is legislation at federal, state and local level. The current analysis focuses on legislation at federal level. The main legislation at federal level over Concessions is the Law 8.987/1995 (hereinafter “Concession Law”, and over PPPs is the Law 11.079/2004 (hereinafter “PPP Law”). Additionally, the Law 8.666/1993 covers procurement and administrative contracts in general, and regulates those issues not covered by the Concession Law and the PPP Law.</p> <p>Other additional legislation: (1) Law 13.334/2016 (hereinafter “PPI Law”) - Creates the Program of Partnerships of Investment and the PPI Council, (2) Decree 8.428/2015 - Expressions for interest and Unsolicited Proposals, (3) Law 12.766/2012 - Modifies the Law 11.079/2004, (4) Decree 6.037/2007 - Modifies the Decree 5.385/2014, (5) Decree 5.385/2005 - Regulatory Decree for the Steering Committee for the Federal Public-Private Partnership, (6) Law 9.074/1995) - Granting and Extension of Concession of Public Services.</p> <p>Finally, it must be considered that PPPs in some sectors are subject to a special legal regime due to their nature, being regulated by specific laws that, in some aspects, may differ from the regulatory framework indicated above, such as: ports (Port Concession Law No. 12,815 of 2013), Telecommunication (Law No. 9,472 of 1997), and Oil and Gas (Law No. 12,351 of 2010).</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	<p>Legislation section of the site of the Ministry of Planning (where the Federal PPP-Unit is located): http://www.planejamento.gov.br/assuntos/desenvolvimento/parcerias-publico-privadas/legislacao/legislacao-federal Legislation section of the site of the PPP-Unit of Sao Paulo: http://www.parcerias.sp.gov.br/Parcerias/Legislacao</p>

2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	<p>Yes</p>
Please describe:	<p>Provisional Measure No. 727 of May 12, 2016 was converted into Law No. 13.334 on September 13, 2016 (Hereinafter “PPI Law”). PPI Law created an institutional body at the presidential/ministerial level known as the Council of the Program of Investment Partnerships of the Presidency of the Republic (PPI Council). PPI Council was given the responsibility to select priority projects and to propagate the PPP agenda with all the involved governmental bodies. It has focused its actions mostly on selecting PPP projects and promoting them in international roadshows.</p>
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	<p>Yes</p>
Please describe:	<p>Provisional Measure No. 752 of November 24, 2016 converted into Law 13.448 on June 5, 2017, establishing conditions for the renewal or the return of PPPs to the government for new procurement. Some contributors indicated that there is currently a project to extend the scope of the Federal Infrastructure Guarantee Fund (Agencia Brasileira Gestora de Fundos in Portuguese), so that the Federal Government can provide guarantees in PPPs carried out by Municipal Governments. This is currently not allowed. Additionally, the government of Brazil is revising PL 559/2013 to adopt a new Procurement Law, which will expedite the public procurement in Brazil.</p>
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
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	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>

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 legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in Brazil and provide their website(s) (if available):	<p>According to the regulatory framework, PPPs can be procured by any entity of the Government. Article 1 of the PPP Law applies to “all departments of the Government, special funds, autonomous government entities, public foundations, government-owned corporations, mixed-capital corporations and other entities controlled directly or indirectly by the Union, States, Federal District and Municipalities.” This competence is often exercised differently in each infrastructure sector. For example, in Ports, the National Agency of Water Transportation (“ANTAQ”) is responsible for conducting the procurement of PPPs, but the Ministry of Transports (and formerly the Port Secretariat adjoint to the Civil Cabinet) is the official procuring authority. On the other hand, in land transportation (roads and railways), the National Agency of Land Transportation (“ANTT”) is the procuring authority and as well the one conducting the procurements. There are also differences in State and Municipal levels, where on occasions there was the preference for</p>

	<p>structuring a Public Company to conduct PPPs (e.g. the “SP Negócios” in the city of São Paulo).</p> <p>Regarding concessions, according to the article 2,I, of the Concession Law, the procuring authority is “the Union, the State, The Federal District or the Municipality, within whose competence the public service is object of the concession or permission.”</p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	No
If yes, please indicate its name, and its website (if available):	n/a
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	n/a
6.2 PPP capacity building for other public authorities.	n/a
6.3 PPP promotion among the public and/or private sectors in national and international forums.	n/a
6.4 Technical support in implementing PPP projects.	n/a
6.5 Identification and selection of PPP projects from the pipeline.	n/a
6.6 Revision of fiscal risks born by the Government.	n/a
6.7 Consultation with affected communities on potential impact of PPP projects.	n/a
6.8 Approval of PPP projects.	n/a
6.9 Undertaking the procurement of PPPs.	n/a
6.10 Oversight of PPP implementation.	n/a
6.11 Other	n/a
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	n/a
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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.	No

Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	
If yes, please specify the relevant authority	n/a
and provide the relevant legal/regulatory provisions (if any):	n/a
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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):	No regulatory basis
11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without	Yes

establishing a specific procedure to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions (if any):	Concerning the prioritization of public investment, it is relevant to notice that the Union have some public policies with the purpose of prioritizing and developing Brazilian infrastructure. One of this policies is the Growth Acceleration Program (PAC, acronym in Portuguese) - http://www.pac.gov.br/ . The PAC was established in 2007 in order to promote the planning and execution of relevant social infrastructure , urban infrastructure, logistics and energy of Brazil. Also, it contributes to the accelerated and sustainable development of the Brazilian infrastructure. Likewise, the Investment in Logistics Program (PIL) - http://www.logisticabrasil.gov.br/ - is the program launched by the Federal Government to enhance the Brazilian logistics infrastructure. Hence, it promotes the investment of foreign and Brazilian investors in such infrastructure, and, by doing so, it prioritizes PPP and concession logistics projects in Brazil.
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?	No
If yes, please specify:	n/a
If no, please elaborate:	According to some contributors, the lack of specific procedure to ensure the consistency of concessions with other public investment priorities leads to a situation in which the prioritization does not follow any specific guidelines.
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	Yes
Relevant legal/regulatory provision (if any)	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:	Socioeconomic benefits of a concession are assessed before the launch of the procurement procedure.
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.3. Risk identification, allocation and assessment (risk matrix)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
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)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 7 of Public Procurement Law and Article 18, item XV of Concession Law, the procurement process must be preceded by the basic

	project to be prepared by a company hired by the Procuring Authority for such purpose. The basic project usually includes all the technical and financial studies, impact studies, among other documents and studies, as required and specific for each concession project, and defined by the procuring authority.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors indicate that financial viability assessment is done in practice.
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.7. Environmental impact assessment	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals	Yes

and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 21 of the Concession Law, the studies, investigations, surveys, projects, works and expenses or investments already made, linked to the concession, useful for the bidding, carried out by the granting authority or with its authorization shall be at the disposal of the interested parties (...)
and specify which of the assessments are included in the request for proposals and/or tender documents:	Studies, investigations, surveys, projects, works and expenses or investments already made, linked to the concession, useful for the bidding, carried out by the granting authority or with its authorization shall be at the disposal of the interested parties (...)
13.1. Are the assessments published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Articles 8-10 of the Federal Law No. 12,527/2011, which regulates the access to public information in Brazil, the relevant documents for the tender must be published by the Procuring Authority on its relative website. Article 8, paragraph 4 provides that municipalities with less than 10,000 inhabitants are not subject to such obligation.
specify the website	Website of a procuring authority
please specify which of the assessments are published online:	Studies, investigations, surveys, projects, works and expenses or investments already made, linked to the concession, useful for the bidding, carried out by the granting authority or with its authorization shall be at the disposal of the interested parties (...)
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):	According to Article 18, 14th paragraph of the Concession Law the procuring authority has the obligation to include a draft of the contract in the request for proposals.
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Articles 8-10 of the Federal Law No. 12,527/2011, which regulates the access to public information in Brazil, the relevant documents for the tender must be published by the Procuring Authority on its relative website. Article 8, paragraph 4 provides that municipalities with less than 10,000 inhabitants are not subject to such obligation.
and please specify the website:	Procuring authority website
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are	n/a

available or provide an electronic copy of them:	
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	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
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	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
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)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring	No

authority (or other Government entity)	
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
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.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 51 of Public Procurement Law provides only that proposals will be processed and judged by permanent or special committee of at least 3 (three) members, at least two (2) of qualified servants belonging to the permanent staff of the administration bodies responsible for the bidding.
The bid evaluation committee members are not required to have any specific qualifications.	No
Please elaborate and provide examples:	n/a
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):	Pursuant to Article 21 of the Public Procurement Law, any public bid must be published in the Official Gazette of the Federal Executive (in case of federal PPPs and Concessions) and in widely circulated newspapers.
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	http://portal.in.gov.br/ (short notice) and, more specifically, the website of the respective Procuring Authority.
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):	Pursuant to Article 21 of the Public Procurement Law, the potential bidders have 45 days to submit their bids, when qualification includes technical criteria, and only 30 days when the selection criteria is only price.
and the time in calendar days:	45
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects?	Yes
Open tendering: Available	
Default	No
Relevant legal/regulatory provision (if any)	Article 2 (III) of Concession Law: "For purpose of this Law, consider (...) II. Concession of public service: the delegation of the providing (of services), by the granting authority, through competitive tendering (...)"
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 114 of the Public Procurement Law allow for a pre-qualification stage.
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	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	No
Available	n/a
Default	n/a
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 40 of the Public Procurement Law, the request for proposals must provide all the details of the tender. According to Article 3 of the Public Procurement Law, paragraph 3, the bid will not be confidential, being available and accessible to the public , except for the content of the proposals until its disclosure.
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):	Pursuant to Article 114 of the Public Procurement Law, “the pre-qualification shall be subject to the requirements of this Act relating to competition, the convening of stakeholders, the procedure and the analysis of the documentation”.
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Contributors confirm that the specified criteria is respected in practice.
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):	Article 39 of the Public Procurement Law establishes that for large projects the bidding process will begin, necessarily, with a public hearing providing bidders with access to all relevant information and to manifest all concerned. Article 40 (VIII) of the Public Procurement Law further establishes that the procurement notice must include the locations, times and access codes distance access to the data, information and clarifications to the tender conditions.
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):	Article 40.VIII of the Law nº 8.666/1993 establishes that the procurement notice must include the locations, times and access codes distance access to the data, information and clarifications to the tender conditions.
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 disclosure of the responses to the clarification requests is done in practice. A list of questions and answers is customarily and periodically published by the procuring authority. However, on the Municipal level it is not always possible to have access of all information related to a bidding procedures.
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Article 39 of the Law nº 8.666/1993 establishes that for large projects the bidding process will begin, necessarily, with a public hearing.
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis

24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	Its done in a public hearing open to all bidders
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	The presentation of a financial model along with the proposals is not a requirement in all the cases comparable to the case study assumptions (it may be required, but is not mandatory).
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):	According to Article 45 of the Public Procurement Law, the examination of the proposals will be done on the basis of the requirements, parameters and outcome indicators relevant to the object, defined clearly and objectively in the public procurement notice.
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one?): The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	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.	Yes
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):	Article 22 of the Concession Law grants every bidder a full access to the decisions of the procurement process. The result of the procurement process should be published by the same means of publication through which the bidding documents were made public.
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	http://portal.in.gov.br/
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):	<p>Article 22 of the Concession Law grants every bidder a full access to the decisions of the procurement process. They are entitled to know the decisions and the result of the PPP procurement process, as well as to challenge them.</p> <p>Also, pursuant to Public Procurement Law, Article 63, all procurement documents shall be made available to the public, upon request.</p>
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The regulatory framework does not provide any minimum information standards, but requires that any third party or stakeholder may have access to the procurement documents. The result of the Concession procurement process shall be recorded in the minutes of meeting of the evaluation committee (comissão julgadora), pursuant to article 43 of Law No. 8,666/1993. In general, every single act of the procuring authority must be duly justified, in accordance to Federal Law No. 9.784/1999 (Federal Administrative Procedures). The decision regarding the result of the Concession procurement process in no exception to that principles, and the right to access such decision implies the access to its grounds for the selection of the winning bid.
30. Is there a standstill (or pause) period after the contract award and before the signing of	No

the contract in order to allow unsuccessful bidders to challenge the award decision?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory 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):	The evaluation committee should negotiate the price with the selected bidder with reference to the lowest price presented among the classified bidders. However, in hypothesis of unsuccessful negotiation, the same procedure shall be applied, in succession, with other ranked bidders in compliance with the Article 46 (II) of the Public Procurement Law. Moreover, in general the Brazilian regulatory framework does not contemplate any sort of negotiation between the selected bidder and the procuring authority between the award and the signature of the contract. The general principle adopted in Brazilian law is that the bidding documents are not to be changed during the bidding process, and that provision includes the contract and its economical terms, since they are part of the bidding documents. That principle is outlined in Articles 3 and 41 of the Public Procurement Law. Any substantial modification on the bidding documents - including the contract - supposes the reedition of the bidding procedure, as established in the Article 21, paragraph 4, of the Public Procurement Law.
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	Contributors confirm that the restriction is respected in practice
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 61, sole paragraph, of the the Public Procurement Law provides that every contract must be published through the official means in order to establish a condition to ensure its efficiency. Publishing an extract of the signed contract is a pre-condition for it to produce effects. Also, according to Article 63 of the Public Procurement Law, all administrative contracts

	derived from public bidding must be kept available. Furthermore, the Public Transparency Law (Law No. 12,527/2011), Article 8, paragraph 1 and paragraph 2, provide that administrative contracts must be made public by the respective competent authority.
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?	Yes
If yes, please specify the website:	http://portal.in.gov.br/
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):	Article 3 of the Concession Law establishes that the competent ministry or regulatory agency must supervise concession contracts. Also, article 67 of the Law 8.666 establish more broadly that the implementation of any contract must be accompanied and supervised by a specially designated representative of the procuring authority. Article 67 of the Public Procurement Law: The execution of the contract must be accompanied and supervised by a representative of Administration

	<p>specially designated. It is permitted to engage third parties to assist and provide information pertinent to this assignment.</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 the Article 67 of the Public Procurement Act No. 8,666, performance of the contract shall be monitored and supervised by a representative of the Specially designated administration, allowing the contracting of third parties to assist and subsidiary in information relevant to that allocation.</p>
<p>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</p>	<p>No</p>
<p>Relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>Elaboration of a PPP implementation manual or an equivalent document</p>	<p>No</p>
<p>Relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</p>	<p>No</p>
<p>Relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</p>	<p>No</p>
<p>Relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.</p>	<p>No</p>

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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	Yes
Please elaborate and provide examples:	There are no specific rules establishing any qualifications that the PPP contract management team members need to have. Article 67 of the Public Procurement Law only provides that the committee members have to be public servants.
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):	Concession Law, Article 23 (VII & VII) provides that a concession contract must contain essential clauses relating to: (VII) the form of supervision of installations, equipment, methods and practices for the service, as well as the indication of the competent bodies to exercise it; (VIII) the contractual and administrative penalties to which the concessionaire is subject and its form of application.
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 implementation after construction?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 58, line III of the Law n° 8.666/1993 establishes that the procuring authority has the responsibility to oversee the implementation of the contract. Article 67 of the same Law n° 8.666/1993 establishes in Article 67 that: The performance of the contract must be accompanied and supervised by a representative of Administration specially designated, permitted to engage third parties to assist and provided with the information pertinent to this assignment. Article 3º and article 23, line VII of the Law n° 8.987/1995 establish among the rights and obligation of the parties that of oversight of the Concession execution.</p>
43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	<p>No</p>
Relevant legal/regulatory provisions (if any)	<p>n/a</p>
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	<p>No</p>
Relevant legal/regulatory provisions (if any)	<p>n/a</p>
The private partner must provide the procuring or contract management authority with periodic operational and financial data	<p>Yes</p>
Relevant legal/regulatory provisions (if any)	<p>According to Article 31(III) of the Concession Law, The concessionaire shall: V allow responsible for monitoring free access at any time, the works, equipment and to members of the service facilities, as well as its accounting records; VI to promote the expropriation and creating easements authorized by the granting authority, as provided in the notice and in the contract According to Article 23(XIV) of the Concession Law, the concessionaire has to publish periodic financial statements.</p>
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	<p>Yes</p>
Relevant legal/regulatory provisions (if any)	<p>No regulatory basis</p>
The PPP contract performance information must be available to the public	<p>No</p>
Relevant legal/regulatory provisions (if any)	<p>n/a</p>

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):	According to the Article 27 of the Concessions Law, any change in the structure of the private partner is to be communicated to the Granting Authority, and any change that implies change in controlling interest is subject to prior authorization of the Granting Authority. The change in controlling interest supposes that the replacing entity meets the same legal, economical and technical qualifications demanded in the procurement process.
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.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 27 of the Concessions Law and more broadly article 55 of the Public Procurement Law provides that private partner shall observe all qualifications required for the procurement phase throughout the life of the contract.
In other cases, flexibility to change the ownership structure and/or assign the contract.	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 27 of the Concessions Law allows for the transfer of the PPP contract under previous authorization of the procurement authority.
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
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Public Procurement Law, Article 57, paragraph 1 provides that a change in the project execution, conclusion and delivery dates may be extended upon certain conditions (change in the project scope, unexpected event, interruption of the project works, increase in the quantities originally agreed, omission or delay from the public partner). Also, Article 65 of the same law provides the conditions on which contracts may be amended.
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 57 of Public Procurement Law allows the delivery dates to be extended in this case. Also, Article 65 of the same law provides the conditions on which there may be a change in scope: The contractor is obliged to accept under the same contractual conditions, additions or deletions that may be in the works, services or purchases, up to 25% (twenty five percent) of the updated initial value of the contract, and in the case private retirement building or equipment, up to 50% (fifty percent) for their additions. Paragraph 2 : No addition or deletion may exceed the limits set out in the preceding paragraph
A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 65 of the Public Procurement Law provides that there may be a economic financial readjustment in order to rebalance the risk between the private partner and the public partner.
A change in the financial and/or economic balance of the contract.	Yes
If yes, please provide the relevant	According to paragraph 4, Article 9 of the Concession Law, in the event of a unilateral change in the contract that affects its initial economic-financial

legal/regulatory/standard contractual provisions (if any):	balance, the granting authority shall reinstate it, concurrently with the amendment.
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Article 57, paragraph 1 of the Public Procurement Law, the project execution, conclusion and delivery dates may be extended upon certain conditions (change in the project scope, unexpected event, interruption of the project works, increase in the quantities originally agreed, omission or delay from the public partner).
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 9, paragraph 2, of the Concessions Law allows the Concession Agreements to provide for tariff reviews if there is a change in the economic financial balance: review of the contract can be conducted if the economics and financial balance is distorted due to a unilateral modification of the contract.
46.3. Can the procuring authority unilaterally modify a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Public Procurement Law, Article 58, public authority can modify contracts unilaterally to better adapt to public interest purposes, subject to the rights of a contractor. Additionally, Article 65 of the Public Procurement Law provides for the unilateral extension up to 25% percent of the initial value of the contract, and up to 50% in exceptional cases (private retirement building or equipment).
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Art. 65, line II, Item d (that regulates the right to reestablishing the economic balance of the contract in case of Force Majeure) and Art. 78, line VII, of the Law nº 8.666/1993; Art. 38, paragraph 1st, line III of the Law nº 8.987/1995 regulates the possibility of termination due to Force Majeure.
Material Adverse government action .	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 65(II) of the Public Procurement Law expressly provides that the Concession contract must regulate material adverse government action.
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 9, 3rd paragraph, of the Federal Law nº 8,987 of 1995 provides that any change in taxes or legal obligations that have economical impact on the concession shall engage revision on the tariffs charged by the concessionaire, in order to maintain the economical balance of the contract.
Refinancing.	No

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 72 of the Public Procurement Law sets out that the contracted party may subcontract the agreement's object to the limit specified in the respective procuring documents.
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?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	The Concession contracts may include a clause of a private dispute resolution mechanism, such as arbitration (the most common in Brazil), as established in the Article 23-A of the Concessions Law. It is not mandatory and it is a choice of the procuring authority when it designs the contract. If arbitration (or another mechanism) is adopted, it must follow the requirements settled in those articles, namely to adopt Portuguese as language, and to be held in Brazil.
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	No
Investor-State Dispute Settlement (ISDS)	No
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	Article 23A of the Concession law: The concession agreement may provide for the use of private disputes arising out of or relating to the agreement, including arbitration, to be held in Brazil and in the Portuguese, under Law no the 9.307, of September 23, 1996
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):	Arbitration awards are enforceable by the local courts pursuant to Article 515, VII, of the Brazilian Civil Procedure Code (Federal Law No. 13,105/2015). Article 31 of the Law 9307 : The arbitral award shall have the same effect on

	the parties and their successors as a judgement rendered by the Judicial Authority and, if it includes an obligation for payment, it shall constitute an enforceable instrument thereof.
International arbitration	No
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
Investor-State arbitration	No
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
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?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 27A of the Concession Law, under the conditions established in the concession agreement, the granting authority will authorize the control or temporary administration of the concessionaire by its financiers and guarantors with those who do not maintain a direct corporate bond, to promote its financial restructuring and ensure the continuity of the provision of services. Article 27A contains further regulation on the subject, namely describing the obligations that the lender must fulfill and the requirements he will have to meet, but each concession contract shall further regulate the matter.
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.	Yes

If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 27-A of the Concession Law describes the obligations that the lender must fulfill and the requirements he will have to meet, but each concession contract shall further regulate the matter: Article 27A of the Concession Law, under the conditions established in the concession agreement, the granting authority will authorize the control or temporary administration of the concessionaire by its financiers and guarantors with those who do not maintain a direct corporate bond, to promote its financial restructuring and ensure the continuity of the provision of services. Article 27A contains further regulation on the subject, namely describing the obligations that the lender must fulfill and the requirements he will have to meet, but each concession contract shall further regulate the matter.</p>
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	<p>No</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	<p>No</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
Other.	<p>No</p>
Please Specify:	<p>n/a</p>
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 35 of the Concessions Law expressly establish the grounds for termination of a PPP contract, namely: (i) the mere end of of the contractual term, (ii) takeover (early termination due to the public interest in reassuming the provision of the services), (iii) forfeiture (concessionaire's breach of contract), (iv) rescission (judicial termination due to the Administration's breach of contract), (v) annulment and (vi) bankruptcy or extinction of the concessionaire.</p>
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant	<p>Article 35, 1st and 2nd paragraphs, of the Concessions Law establishes that the termination of the PPP contract have the following consequences: (i)</p>

legal/regulatory/standard contractual provisions (if any):	transfer of the public service to the Government, as well as (ii) the return of all the reversible assets to the Government and (iii) application of the regime of compensations for the termination of the contract.
Unsolicited Proposals	
34. Are unsolicited proposals in Brazil: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	Unsolicited proposals for Concessions are regulated by the Federal Decree No. 8.428/2015. Unsolicited proposals may be submitted to the public authorities by private persons or legal entities, in a process call “Procedimento de Manifestação de Interesse” (Private Interest Manifestation).
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	USPs Evaluation procedure is outlined in the Decree No. 8.428/2015: Article 9: The evaluation and selection of projects, surveys, investigations and studies presented will be made by a commission appointed by the requesting body or entity. Art. 10: The criteria for evaluation and selection of projects, surveys, investigations and studies shall be specified in the public call notice. Art. 11: None of the selected projects, surveys, investigations and studies is the responsibility of its technical and legal bodies to evaluate, express and approve the legality, consistency and sufficiency of the projects, surveys, investigations and studies eventually presented. Art. 12: Projects, surveys, investigations and studies may be rejected with or without compensation.
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	No

<p>consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	No regulatory basis
<p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p>	No
<p>Please elaborate and provide examples:</p>	n/a
<p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>The Brazilian regulatory framework establishes that once an unsolicited proposal is filed, the procuring authority has the obligation to issue a public call for proposals, in order to verify if there are other private parties interested in providing the studies for a PPP or common concession (article 1 and 3 of the Federal Decree No. 8,428/2015). The procuring authority issues the authorization to present projects, surveys, investigation and studies, and, once such studies are presented, the procurement authority processes their evaluation, according with the assessments above, according to the article 1, 4th paragraph, of the Federal Decree nº 8,428 of 2015. Once the studies are concluded, after the evaluation of the unsolicited proposals, the procuring authority is free to decide whether to initiate a competitive procurement procedure or not. Finally, any selected unsolicited proposal is followed by a public call for proposals, since pursuant to article 17 of Federal Decree 8.428/2015, the unsolicited proposal leads to a regular bidding process, with the exception that the unsolicited proposal's cost should be compensated during the public tender.</p>
<p>38. Does the procuring authority grant a minimum period of time to additional prospective</p>	Yes

bidders (besides the proponent) to prepare their proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 21, paragraph 2 of the Public Procurement Law applies to USPs: The minimum term until the receipt of the proposals or the accomplishment of the event will be: 30 (thirty) days for the competition; 45 (forty five) days for the contest; 15 (fifteen) days for the taking of prices or auction; 45 (forty-five) days for the bidding of the best technical or technical type and price, or when the contract to be celebrated contemplate the modality of integral undertaking; 5 (five) business days for the invitation.
and the time in calendar days:	45
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).	Yes
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.	Yes
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	Brazilian legislation provides that the original proponent will be reimbursed for the projects development cost by the winner of the public procurement (as a condition to sign the PPP contract). The possibility of reimbursement of the developer's fee is settled in Article 21 of the Concession Law. Article 17 of the Federal Decree No. 8,428/2015 provides that, if the unsolicited proposal studies are used for the bid, the bidding documents must explicitly contain the obligation of reimbursement for the project development cost by the winner of the procurement process.