



PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN CANADA

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>There are no regulatory barriers to doing PPPs in Canada at the federal, provincial, or municipal level. The Canadian PPP regulatory framework on the federal level would include:</p> <ul style="list-style-type: none"> -Government Contracts Regulations SOR/87-402 (1987) (last amended September 22, 2011) -Department of Public Works and Government Services Act S.C. 1996, c. 16 (last amended on June 26, 2013) -Financial Administration Act R.S.C., 1985, c. F-11 (1985) (last amended on October 1, 2014) -Procurement Services Act [SBC 2003] Chapter 22 (Assented to April 10, 2003) -Guideline to Implementing Budget 2011 Direction on Public-Private Partnerships, issued by the Treasury Board in 2012 [hereinafter “Federal Implementing Guidelines”]. According to Section 6.1 of these Guidelines, “In the Government of Canada, P3s are governed by various Treasury Board policies and their associated standards and directives. Policies governing federal investments in assets and acquired services primarily reside under the Policy Framework for the Management of Assets and Acquired Services. Ensuring value for money in the management of assets and acquired services is a guiding principle of the framework and its associated policy instruments. <p>Deputy heads are accountable for ensuring that proper due diligence is conducted and that investment decisions demonstrate value for money in line with the principles outlined in Treasury Board policies.</p> <p>The following is a summary of relevant Treasury Board policy considerations for P3s:</p> <p>Under the Policy Framework for the Management of Assets and Acquired Services, value for money and sound stewardship are achieved through a life-cycle approach to the management of assets and acquired services. For decisions involving federal real property, departments and agencies may consult the Policy on Management of Real Property. The Guide to the Management of Real Property provides guidance to departments and agencies on real property decisions throughout the property’s life cycle. Federal investments should be considered in the context of the department’s investment planning process. The objective of the Policy on Investment Planning is to contribute to the achievement of value for money and sound stewardship in government program delivery through effective investment planning.</p> <p>Federal real property projects are subject to the requirements of the Policy on</p>

	<p>the Management of Projects. The objective of the policy is to ensure that the appropriate systems, processes, and controls for managing projects are in place at a departmental, horizontal, or government-wide level and that they support the achievement of project and program outcomes, while limiting the risk to stakeholders and taxpayers.</p> <p>Departments and agencies may consult the Contracting Policy and associated policy instruments for contracting and procurement considerations.”</p> <p>-The Treasury Board of Canada Secretariat Business Case Guide (2008).</p> <p>-Additional components of a PPP screening process are guides particularly for federal departments and agencies developed by the relevant Governmental entity, PPP Canada, in accordance with the aforementioned Federal Implementing Guidelines and with the Treasury Board of Canada Secretariat’s Policy on Investment Planning. These Guides are comprised of: a) Federal P3 Screen b) Procurement Options Analysis Development Guide; c) Procurement Options Analysis Methodology Guide; d) P3 Business Case Development Guide.</p> <p>-Treasury Board of Canada Secretariat Contracting Policy (1989) [hereinafter “Federal Contracting Policy”]. This includes the Policies’ Appendix C - Treasury Board Contracts Directive; Section 3 of the Federal Contracting Policy addresses its scope of application and provides, “This policy applies to all departments and agencies, including departmental corporations and branches designated as departments for purposes of the Financial Administration Act, except those included within the meaning of paragraph (c) of the definition of “department” found in section 2 of that Act.”</p> <p>-Competition Act, RSC 1985, c C-34 (1985)</p> <p>Additionally, contributors highlighted the nature of the country’s legal system, which embodies case law and inter-provincial trade agreements that the regulatory framework would be comprised of in addition to provincial laws. This shall form the regulatory framework on PPPs in Canada’s federal level system for purposes of this analysis.</p>
<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>	<p>Federal Acts: http://lois.justice.gc.ca/eng/ Federal P3 Screening Guides: http://www.p3canada.ca/en/screening-and-advisory-services/the-building-canada-fund/procurement-options-analysis/ Treasury Business Case Guide: http://www.tbs-sct.gc.ca/emf-cag/business-rentabilisation/bcg-gar/bcg-gar-eng.pdf</p>
<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>	<p>No</p>

Please describe:	n/a
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	No
Please describe:	n/a
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.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No

If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	No
If yes, please specify and provide the relevant legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in Canada and provide their website(s) (if available):	<p>There are multiple procuring authorities in Canada. On the Federal level, Crown Agencies and Corporations act as procuring authorities. Article 2 of the Government Contracting Regulations defines “contracting authority” as:</p> <p>(a) the appropriate Minister, as defined in paragraph(a), (a.1) or (b) of the definition appropriate Minister in section 2 of the Financial Administration Act;</p> <p>(b) a department within the meaning of paragraph (a.1) of the definition of “department” in section 2 of the Financial Administration Act that has the legal authority to enter into a contract;</p> <p>(c) a departmental corporation named in Schedule II to the Financial Administration Act;</p> <p>(d) any individual - other than a commissioner appointed under the Inquiries Act and any individual authorized under the Parliament of Canada Act to enter into a contract - who is authorized by or under an Act of Parliament to enter into a contract. (autorité contractante).</p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name, and its website (if available):	PPP Canada - http://www.p3canada.ca/
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	Yes
6.2 PPP capacity building for other public authorities.	Yes
6.3 PPP promotion among the public and/or private sectors in national and international forums.	Yes
6.4 Technical support in implementing PPP projects.	Yes

6.5 Identification and selection of PPP projects from the pipeline.	Yes
6.6 Revision of fiscal risks born by the Government.	No
6.7 Consultation with affected communities on potential impact of PPP projects.	Yes
6.8 Approval of PPP projects.	Yes
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>The Federal Implementing Guidelines in Section 4 provide that PPP Canada has been established “to advance federal efforts to increase the effective use of P3s in Canada. PPP Canada advises departments and agencies in support of P3s and assesses federal P3 opportunities. It also provides information and support services to departments and agencies considering a P3 option.”</p> <p>Additionally, the Federal P3 Screen, Procurement Options Analysis Development, Procurement Options Analysis Methodology, and P3 Business Case Development Guides clarify that government agencies and departments should engage PPP Canada in the analysis process.</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):	If the project is receiving federal funds, then it is subject to the approval of the appropriate government ministry (e.g., Transport Canada). Article 4.1.6 of the Treasury Board Federal Contracting Policy provides, “Treasury Board approval must be obtained prior to entering into contracts or contractual arrangements where the values or the contract costs (which include all applicable taxes including GST and HST) exceed the limits prescribed by the Treasury Board in the Treasury Board Contracts Directive (Appendix C).”
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The Federal Treasury Board approval is required before contract execution. This approval requirement is not exclusive for PPPs but also required for similar scope procurement under any model. Previously mentioned Article 4.1.6 of the Treasury Board Federal Contracting Policy thus applies.
8.2. Does the Ministry of Finance (or government more	No

broadly) have a specific system of: Budgeting for PPP projects.	
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).	n/a
Accounting and reporting according to other international standard (e.g. European System of Accounts).	n/a
Please specify:	n/a
Other.	n/a
Please specify:	n/a
9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	Yes
If yes, please specify the relevant authority	Contributors identified that the (Conseil des ministres), or the Cabinet, would approve certain PPP projects that are large scope projects, which are considered new policy initiatives within the Federal Government.
and provide the relevant legal/regulatory provisions (if any):	Section 127(2) of the Financial Administration Act addresses public borrowing and stipulates, "Where a parent Crown corporation indicates in a corporate plan or an amendment to a corporate plan an intention to borrow money, the Minister of Finance may require that his recommendation, in addition to that

	of the appropriate Minister, be obtained before the plan or amendment is submitted to the Governor in Council for approval.”
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):	<p>It will depend on the nature and type of the project. According to Section 6.4 of the Guideline to Implementing Budget 2011 Direction on Public-Private Partnerships, “because of certain unique and complex features of the value for money analysis for P3s, a variety of advisory services may be used through the process.” These would include:</p> <p>Facilities Management / Output Specification Advisors: These technical advisors assist in the development of the output requirements and the standards for the asset.</p> <p>Cost Consultants or Design Consultants: These consultants provide assistance in assessing the costs of designing and building the asset. They can also provide cost data for the risk workshops.</p> <p>Other advisors may be used throughout the planning process, including:</p> <p>Transaction Advisors: These advisors provide support for the competitive process, contributing to the development of documentation such as the request for qualifications, the request for proposals and the project agreement. A fairness monitor may also be used as part of the competitive process.</p> <p>Legal Advisors: Legal advisors can identify potential legal or legislative hurdles in the early stages of the project and provide solutions for addressing them. They can also help draft and review legal documentation throughout the later stages of the planning process</p>
11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary	No

<p>framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<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>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>On the federal level, Section (2) of the Canadian Strategic Infrastructure Fund Act (S.C. 2002, c. 9, s. 47) provides, "The Fund shall, where appropriate, promote the use of partnerships between public and private sector bodies." And according to Section 5 of the Federal Implementing Guidelines, "[B]udget 2011 encourages federal organizations to explore potential P3 opportunities through a P3 screen for infrastructure projects that have capital costs of less than \$100 million and a lifespan of less than 20 years. Budget 2011 also encourages federal organizations to explore P3 opportunities for investments other than federal infrastructure projects."</p>
<p>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</p>	No
<p>If yes, please elaborate:</p>	n/a
<p>The procuring authority does not evaluate PPPs against existing government priorities.</p>	No
<p>Please elaborate and provide examples:</p>	n/a
<p>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?</p>	Yes

If yes, please specify:	This is in application of the previously mentioned framework.
If no, please elaborate:	n/a
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	Yes
Relevant legal/regulatory provision (if any)	The Business Case Guide issued by the Board of Treasury on the Federal level provides the methodology for socio-economic analysis of PPP projects. Section 3.4.3 of this Guide discusses “impact assessments”.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	The Business Case Guide issued by the Board of Treasury on the Federal level provides the methodology for socio-economic analysis of PPP projects. Section 3.4.3 discusses “impact assessments” and lists a number of factors that should be provided and assessed in order to proceed with investments. These include: Economic:- Fluctuating interest and exchange rates- Current economic situation and trends- Current and projected economic growth- Unemployment and labour supply- Labour costs- Levels of disposable income and income distribution Social:Resources, training, change management, and cultural impact- Population growth rate and age profile- Population health, education, social mobility, and attitudes toward these- Population employment patterns, job market freedom, and attitudes toward work- Employee engagement In addition, according to New Building Canada Fund: Procurement Options Analysis Guide [hereinafter “Procurement Analysis Guide”] http://www.p3canada.ca/~media/english/resources-library/files/nbcf%20poa%20guide_20140328_final_eng_clean.pdf , issued by PPP Canada, identified in Section 2 under “Qualitative Analysis” the need to include economic and social factors in the assessment of PPP projects.
Is the assessment done in practice?	Yes
Details:	This is in application of the previous guidelines to ensure PPP projects are well screened.
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	The Procurement Analysis Guide in Section 4 on “Quantitative Analysis” discusses “P3 Model Cost Estimates.” The factors that would be highlighted in this analysis would ensure the operation, maintenance and lifecycle services are paid for by the Procuring Authority and the payments are referred to as

	<p>the Non-Capital Annual Service Payment (Non-Capital ASP). Similar to the Capital ASP, the NonCapital ASPs are made regularly on a monthly or quarterly basis. There is no financing element associated with the Non-Capital ASP. The total of the Capital ASP and Non-Capital ASP is simply referred to as the Annual Service Payment (ASP). The calculation of the Capital ASP and Non-Capital ASP are the main components of this analysis. Moreover, Section 6.2 discusses investment costs where the purpose of this section is to present two separate base cost estimates, on a whole-of-life basis, of the PSC and the preferred P3 model.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>The Federal Procurement Analysis Guide in Section 4 on “Quantitative Analysis” discusses “P3 Model Cost Estimates.” The factors that would be highlighted in this analysis would ensure the operation, maintenance and lifecycle services are paid for by the Procuring Authority and the payments are referred to as the Non-Capital Annual Service Payment (Non-Capital ASP). Similar to the Capital ASP, the NonCapital ASPs are made regularly on a monthly or quarterly basis. There is no financing element associated with the Non-Capital ASP. The total of the Capital ASP and Non-Capital ASP is simply referred to as the Annual Service Payment (ASP). The calculation of the Capital ASP and Non-Capital ASP are the main components of this analysis. The Canadian Cost-Benefit Analysis Guide: Regulatory Proposals also provides a cost benefit analysis guide in Step 4. And the Federal Identifying PPPs Guide identifies affordability criteria in Criterion 13 under “Life-Cycle Costs.”</p>
Is the assessment done in practice?	Yes
Details:	This is in application of the previous guidelines to ensure PPP projects are well screened.
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	<p>According to the PPP Screening criteria in Section 5 of the Federal Implementing Guidelines, the “The potential value of a P3 delivery model is heavily dependent on the ability to identify and allocate risks. While a full risk assessment will be undertaken as part of the value for money analysis, departments and agencies are encouraged to conduct a preliminary review of potential risks as part of the P3 screen. It will be helpful to assess whether there may be opportunities to transfer these risks to the private sector and to determine the extent to which the investment will benefit from the transfer of risks. Risks that the private sector may be in a better position to manage include, for example, those related to design, construction, recapitalization, and timeline. The public sector is often in the best position to manage demand-related risks.”</p>
Is there a specific methodology for the assessment?	Yes

If yes, please elaborate	Section 3.5 of the Business Case Guide outlines risk assessment factors. Step 5 of the Federal Procurement Analysis Guide details this assessment under “Risk Analysis and Quantification.”
Is the assessment done in practice?	Yes
Details:	This is in application of the previous guidelines to ensure PPP projects are well screened.
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	Yes
Relevant legal/regulatory provision (if any)	Section 6 of the Federal Implementing Guidelines provides in 6.2, “Value for money analysis essentially represents a risk-adjusted comparison of the costs and benefits of different investment options. While the distinction between value for money analysis and the development of the business case varies, for the purpose of this guide, value for money analysis is seen as an input into the development of the business case. The business case combines the analysis of requirements and screening with a preliminary value for money analysis that includes qualitative, quantitative, and risk factors.”
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Sections 6.3 and 6.4 of the Federal Implementing Guidelines detail comparative assessment analysis standards.
Is the assessment done in practice?	Yes
Details:	This is in application of the previous guidelines to ensure PPP projects are well screened.
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	Section 5 of the Federal Implementing Guidelines highlights the importance of assessing the “Financial or Funding Considerations” as part of the PPP screening process. Section 6.4 of the Federal Procurement Analysis Guide also articulates financing assumptions corresponding to the different potential procurement models, which include: the assumed financing plan under the P3 model, including the types, amounts and timing of different senior-debt, equity or mezzanine instruments, along with associated fees and pricing.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Section 4 of the Federal Procurement Options Analysis Methodology provides outlines components of financial viability and bankability assessments.
Is the assessment done in practice?	Yes

Details:	This is in application of the previous guidelines to ensure PPP projects are well screened.
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	The Federal Implementing Guidelines provide under Section 5 entitled "Budget 2011 and P3 Screening," the "Private Sector Interest and Capacity: It is important to determine as early as possible whether there will be private sector interest in the potential investment because the value proposition of a P3 is enhanced by competition. Requests for expressions of interest and other forms of market sounding are often used as tools to assess market interest. Private sector interest is a primary driver in the ability of the model to deliver value; the level of interest depends on a variety of factors including the considerations outlined in this section."
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Details of market assessment of what is referred to as "market sounding" is outlined in Section 3.0 Step 4 of the Business Case Development Model. Additionally, Section 3 of the Procurement Analysis Guide also addresses market sounding, and sets the objective of this assessment to:- Outline the Procuring Authority's overall strategy for engaging with market sounding participants;- Describe the process used to identify market sounding participants to ensure that selected participants are appropriate. A list of market sounding participants should be included;- Describe the process used to conduct market soundings, including details about the project related information provided to participants in advance of the meeting, the role of the Procuring Authority during meetings; questions asked; and- Provide information on the Procuring Authority's plan for follow-up consultations and refreshes.
Is the assessment done in practice?	Yes
Details:	This is in application of the previous guidelines to ensure PPP projects are well screened.
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	The Canadian Environmental Assessment Act 2012 (http://laws-lois.justice.gc.ca/eng/acts/C-15.21/) provides in Section 13, "A designated project for which the responsible authority is referred to in any of paragraphs 15(a) to (c) is subject to an environmental assessment." Section 15 includes, "(c) the federal authority that performs regulatory functions, that may hold public hearings and that is prescribed by regulations made under paragraph 83(b), in the case of a designated project that includes activities that are linked to that federal authority as specified in the regulations made under paragraph 84(a) or the order made under subsection 14(2)." Section 2.3 of the Procurement Analysis Guide on "Investment Description and Rationale" provides, "Feasibility studies should assess the degree to which various features of the investment are either sustainable or achieve the

	<p>objectives desired by the department or agency. A common approach used in feasibility studies is the use of the triple bottom line (TBL) analysis. The TBL assesses different options on the basis of social, economic and environmental factors.” The Section stresses that departments should obtain relevant screening information from sources such as environmental assessment reports to ensure the project’s feasibility.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Under the Canadian Environmental Assessment Act 2012 provides that factors that must be considered when conducting environmental impact assessments in Section 19 of this Act.</p> <p>Section 19 (1) provides, “The environmental assessment of a designated project must take into account the following factors:</p> <ul style="list-style-type: none"> (a) the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out; (b) the significance of the effects referred to in paragraph (a); (c) comments from the public — or, with respect to a designated project that requires that a certificate be issued in accordance with an order made under section 54 of the National Energy Board Act, any interested party — that are received in accordance with this Act; (d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the designated project; (e) the requirements of the follow-up program in respect of the designated project; (f) the purpose of the designated project; (g) alternative means of carrying out the designated project that are technically and economically feasible and the environmental effects of any such alternative means; (h) any change to the designated project that may be caused by the environment; (i) the results of any relevant study conducted by a committee established under section 73 or 74; and (j) any other matter relevant to the environmental assessment that the responsible authority, or — if the environmental assessment is referred to a review panel — the Minister, requires to be taken into account.”
Is the assessment done in practice?	Yes
Details:	This is in application of the previous guidelines and Act and to ensure PPP projects are well screened.
12.8. Consultation process with affected communities on potential impact of the PPP project	Yes

Relevant legal/regulatory provision (if any)	The Canadian Environmental Assessment Act 2012 also provides within the environmental impact assessment scheme, the environmental assessment of a designated project may take into account community knowledge and Aboriginal traditional knowledge (Section 19(2)(3)).
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	This is in application of the previous Act and to ensure PPP projects are well screened.
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):	No regulatory basis
and specify which of the assessments are included in the request for proposals and/or tender documents:	For environmental impact assessments http://ceaa-acee.gc.ca/010/type3index-eng.cfm
13.1. Are the assessments published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
specify the website	http://ceaa-acee.gc.ca/010/type3index-eng.cfm
please specify which of the assessments are published online:	Environmental impact assessments
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 the Federal Procurement Services Act, "(3) The minister may recommend to government, government organizations and local public bodies(a) practices,(b) the form and content of agreements, and(c) arrangements that promote fair and open procurement, competition, demand aggregation, value for money, transparency and accountability."Additionally, Section 12.4.2 of the Contracting Policies provides, "12.4.2 As stated in article 4.2, the Standard Government Construction Contract has been prescribed for all construction contracts that exceed \$100,000. The basic policy governing the principles and expression of the Standard Government Construction

	Contract is the prerogative of the Treasury Board. However, the style and content are the responsibility of the Public Works and Government Services Canada.”
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):	Section 10.7.38 of the Federal Contracting Policy provides, “For procurements subject to NAFTA and WTO-AGP, after the publication of an invitation to participate, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, a contracting authority finds that it has become necessary to amend or reissue the notice or tender documentation, the contracting authority shall ensure that the amended or reissued notice or tender documentation is given the same circulation as the original. Any significant information given by a contracting authority to a supplier with respect to particular procurement shall be given simultaneously to all other interested suppliers and sufficiently in advance so as to provide all suppliers concerned adequate time to consider the information and to respond.”
and please specify the website:	Documents pertaining the public calls and requests for proposals may be published on the following websites - MERX, Bid-N-Go, https://buyandsell.gc.ca/procurement-data/tender/ ; and http://www.p3canada.ca/en/about-p3s/project-map/
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	Standardized contracts have been developed at the federal level. Federal “templates” can be found at PPP Canada: http://www.p3canada.ca/
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 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 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):	No regulatory basis
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):	The Canadian Agreement on Internal Trade (Consolidated Version 2015) in Article 506 of this Agreement provides, "2. A call for tenders shall be made through one or both of the following methods, which may be supplemented with any other notification method, such as newspapers or trade journal publications:(a) the use of an electronic tendering system that is equally accessible to all Canadian suppliers; the notices of a call for tenders shall be available to suppliers free of charge;(b) (c) the use of source lists, provided that, in respect of any source list:(i) registration on the source list is consistent with Article 504;(ii) all registered suppliers in a given category are invited to respond to all calls for tenders in that category; and(iii) a supplier that meets the conditions for registration on the source list is able to register at any time.3. Each Party shall designate the electronic tendering system referred to in paragraph 2(a) that its covered entities will use when making its calls for tenders. If a Party decides to change the designation of the electronic tendering system, it shall notify the other Parties at least 30 days prior to implementing that change."Publicly-available procurement websites are (e.g. MERX, Bid-N-Go, https://buyandsell.gc.ca/procurement-data/tender)
19.1. If yes, is the public procurement notice published online?	Yes

If yes, please specify the website:	https://buyandsell.gc.ca/procurement-data/tenders
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):	Contributors have identified that the minimum periods are provided in the request for qualifications or proposals. Nonetheless, the Canadian Internal Trade Agreement Section 506 provides, "5. Each Party shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information and the complexity of the procurement."
and the time in calendar days:	n/a
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Section 7 of the Government Contracting Regulation provides, "A contracting authority shall solicit bids by (a) giving public notice, in a manner consistent with generally accepted trade practices, of a call for bids respecting a proposed contract; or (b) inviting bids on a proposed contract from suppliers on the suppliers' list." Federal Contracting Policy 10.1.1 also provides, "As required by Section 5 of the Government Contracts Regulations, the contracting authority is to solicit bids before any contract is entered into. The competitive approach in determining a contractor should therefore be the norm." Contributors confirm that open tendering remains one of the options available within the competitive bidding scheme for PPP projects.
22.2. Restricted tendering (with pre-qualification stage): Available	No
Default	Yes
Relevant legal/regulatory provision (if any)	Federal Contracting Policy 10.7.20 provides, "Pre-qualification of bidders. When the size or complexity of a project necessitates further special assurance of the contractor's ability, all necessary tests of the competence of prospective contractors may be made in advance. Bids are then invited only from the firms that have qualified. The possibility of disqualifying a firm after it has incurred a considerable expense in bidding on a large special project is

	<p>thereby reduced or eliminated.” Section 1.7 of the Federal P3 Screen also provides, “P3s, by virtue of their long-term nature, require a significant investment in upfront planning and analysis and the engagement of advisors with P3 expertise. This upfront planning serves as an assurance that needs are well understood and articulated; that cost estimates are robust; that risks are understood and optimally allocated; and that competitive bids will be received through the Request for Qualification (RFQ) and Request for Proposals (RFP) process. The benefits of the due diligence implied by the P3 planning process can improve the performance of public sector investments that often involve the expenditure of hundreds of millions in public funds.”</p> <p>The Appendix to the Federal Implementing Guidelines lists components of a competitive bidding process as,</p> <ul style="list-style-type: none"> Issue request for qualifications Issue request for proposals to qualified bidders Engage in collaborative dialogue with bidders Refine project agreement accordingly Proposal evaluation Recommendation of selected proposal Revise value for money analysis with selected proposal information (see Section 6.3) Decision Point—P3 identified as preferred option through updated value for money analysis.
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Federal Contracting Policy 10.7.22 provides, “Two-step proposal (including price competition). This method is used when, owing to the special nature of the requirement and the lack of a detailed definition of the specifications, the selection is to be based largely on the technical and managerial proposals submitted. Final selection among the firms that have submitted acceptable technical and managerial proposals is then made on the basis of price. One of the methods above may be used to choose firms to be invited. Pre-qualification is frequently the most appropriate in these circumstances.”
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	No
Default	No
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):	<p>According to Section 10.7.41 of the Federal Contracting Policy, "Call for tenders under the Agreement on Internal Trade. A notice of a call for tenders shall contain at least the following information: a brief description of the procurement contemplated; the place where a person may obtain information and tender documents; the conditions for obtaining the tender documents; the place where the tenders are to be sent; the date and time limit for submitting tenders; the time and place of the opening of the tenders in the event of a public opening, and a statement that the procurement is subject to the AIT." Section 10.5.1 of this Policy furthermore provides, "Requirements should be defined and specifications and estimates established before bids are solicited and contracts let, so that all prospective contractors are treated equally. In acquiring complex capital equipment, construction or services, other procedures may help control time, cost and performance. Some of these are described below. The procurement method chosen should be indicated, with supporting justification, when contract approval is sought, whether within a department or agency or from the Treasury Board. Adequate specification details should be available to all interested or qualified firms."</p>
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):	<p>According to Section 10.7.1 of the Federal Contracting Policy, "Equal opportunity for all contractors. In accordance with the policy statement to reflect fairness in spending public funds and the requirements under the trade agreements, the method of procurement used for a particular acquisition must, within the limits of practicality, give all qualified firms an equal opportunity for access to government business." Section 10.5.1 of this Policy furthermore provides, "Requirements should be defined and specifications and estimates established before bids are solicited and contracts let, so that all prospective contractors are treated equally. In acquiring complex capital equipment, construction or services, other procedures may help control time, cost and performance. Some of these are described below. The procurement</p>

	method chosen should be indicated, with supporting justification, when contract approval is sought, whether within a department or agency or from the Treasury Board. Adequate specification details should be available to all interested or qualified firms.”
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):	Fair and consistent application of evaluation criteria is supported through the establishment of evaluation frameworks which are reviewed by third party fairness monitors
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):	The Federal Contracting Policies in Section 10.8.22 provide, “Forwarding of Tender Documentation by the Entities under the North American Free Trade Agreement and the World Trade Organization - Agreement on Government Procurement. The respective agreements require that in open and selective procedures, contracting authorities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating hereto.”
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):	General rules on transparency and fairness of the bidding process would apply according to Section 10.7.27 of the Federal Contracting Policies, which stipulate, “The principle of applying bid criteria or requirements equally to all bidders is part of Canadian contract law and is applicable to both the public as well as the private sectors. Fairness to all prospective contractors and transparency in the award process are imperative.” Section 10.7.2 of these Policies also provides, “Contracting authorities should note that when a combination of solicitation processes is used together, it is essential that they commence and close on the same dates; provide potential suppliers with the same information; and impose identical obligations on these suppliers.” As for the proprietary information that may harm certain bidders, contributors have explained that for RFQs the answer is generally they are shared with all bidders.” In RFPs there are two types of questions, (a) those that are not confidential and the responses go to all bidders. The second type of question are commercial in confidence questions. The responses to those questions only go to the proponent who submitted the question. Proponents indicate

	which category they think their question falls into. It is the public sector which must decide if they agree with the classification of the question or not.
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:	Disclosure is part of upholding a transparent and fair procurement process.
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):	No regulatory basis
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?	No
If yes, please specify:	n/a
If no, please elaborate:	Contributors provided that in actual implementation, disclosure varies by project and authority.
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to the PPP Canada Procurement Options Analysis Guide, which addresses "P3 model Cost Estimates", Section 2.1.1.2 on Bid Preparation provides, "The scope of P3 projects increases the amount of work required to prepare bids when compared to PSC model. Private partners must respond to design, construction, financing and operations/maintenance requirements, ensuring that each element forms a single, cohesive proposal. This additional effort translates into significant additional costs to the private partner." Contributors provided that the financial model must detail the nature of the

	<p>payments made by the authority and what these payments cover, more specifically:</p> <ul style="list-style-type: none"> - Provide financial projections (cost and revenue) on a monthly basis from Financial Close until the end of the Project Agreement - Macroeconomic assumption schedules - Capital and operating costs - Taxation details - Payment mechanism - Key dates to Financial Close - A set of required outputs in the pre-specified format - RFP evaluation forms - Financial statements
If no, please elaborate:	n/a
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 10.7.27 of the Federal Contracting Policies, which stipulate, “The principle of applying bid criteria or requirements equally to all bidders is part of Canadian contract law and is applicable to both the public as well as the private sectors. Fairness to all prospective contractors and transparency in the award process are imperative.” Reference could also be made to the Supreme Court of Canada’s judgment on the law of tender in <i>Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)</i>, 2010 SCC 4 (CanLII), [2010] 1 S.C.R. 69. (<i>Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)</i>, [2010] 1 SCR 69, 2010 SCC 4 (CanLII), <http://canlii.ca/t/27zz2>, retrieved on 2016-03-30) provides a helpful overview of the law of tender, at para. 87:For almost three decades, the law governing a structured bidding process has been dominated by the concept of Contract A/Contract B initially formulated in <i>The Queen in right of Ontario v. Ron Engineering & Construction (Eastern) Ltd.</i>, 1981 CanLII 17 (SCC), [1981] 1 S.C.R. 111. The analysis advanced by Estey J. in that case was that the bidding process, as defined by the terms of the tender call, may create contractual relations (“Contract A”) prior in time and quite independently of the contract that is the actual subject matter of the bid (“Contract B”). Breach of Contract A may, depending on its terms, give rise to contractual remedies for non-performance even if Contract B is never entered into or, as in the present case, it is awarded to a competitor. The result of this legal construct is to provide unsuccessful bidders with a contractual remedy against an owner who departs from its own bidding rules. Contract A, however, arises (if at all) as a matter of interpretation. It is not imposed as a rule of law. [Emphasis in original.]”</p>
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	Yes

PPP contract where only one proposal is submitted.	
Please specify and provide the relevant legal/regulatory provisions (if any):	According to Section 10.8.10 of the Federal Contracting Policies, “When only one valid bid has been received, that bidder may also be asked to provide price substantiation. If the information provided is not acceptable to the contracting authority, then price negotiation should take place. If the single bidder does not appear to have the requisite financial stability, it may be in the public interest to require the bidder to submit an appropriate form of security before the bid is considered. Another alternative would be to invite new bids.”
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Contributors have provided that the awards are published electronically on the federal level on http://www.p3canada.ca/en/about-us/media-room/ . Section 10.7.31 of the Federal Contracting Policy provides, “10.7.31 In order to demonstrate the requirement for access and openness in government contracting, contracting authorities are encouraged to publish an Advance Contract Award Notice (ACAN) for contracts with pre-identified contractors using electronic bidding methodology. If no statements of capabilities meeting the requirements set out in the ACAN are received within fifteen calendar days, the contract is deemed to be competitive and the higher electronic bidding dollar levels apply.”
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	https://buyandsell.gc.ca/
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):

According to Section 10.8.21 of the Federal Contracting Policies, “Debriefings should be provided to unsuccessful bidders on request and should normally include an outline of the factors and criteria used in the evaluation, while respecting each bidder’s right to the confidentiality of specific information. “Additionally, judicial decisions provide a basis for this. In Canadian Federal Courts, the Khoury Real Estate Services Ltd. v. Canada (Public Works and Government Services), 1996 CanLII 11863 (FC) (Federal Court of Canada Trial Division) <http://canlii.ca/t/g07wb> discusses this aspect in its application of the Freedom of Information and Protection of Privacy Act (R.S.O. 1990, c. F.31, as amended) and the Court explains, “Protection of proprietary information and ensuring an appropriate measure of confidentiality concerning details of different proposals are accepted aspects of the process of tendering in response to invitations to contract. At the same time, courts have traditionally intervened at least in the award of public contracts where there is unfairness in the process (Assaly (Thomas C.) Corp. v. Canada, [1990] 34 F.T.R. 156 (F.C.T.D.)), or possibly for other reasons necessary to ensure the integrity of the process. Clearly, judicial review of decisions made in the contracting of work by federal public authorities is within this Court’s jurisdiction (Gestion Complexe Cousineau (1989) v. Canada, 1995 CanLII 3600 (FCA), [1995] 2 F.C. 694 at 702-703, per Décaré J.A.). It is due to the necessity of ensuring fairness in the process that tenders submitted on projects that are defined in detail ordinarily lead, on opening of the bids, to publication of the tender prices submitted. That ensures for all who have submitted a tender, that their tender has been received and evaluated in relation to cost at the prices they have set, and it also indicates where their tender ranks, in terms of price, in relation to others. In that process, the cost or price is that determined by the party submitting the tender.” The Court further applies these standards to the facts of the case, which concerned a residential development project conducted under a PPP project and clarifies, “ That is not the process followed in this case. Here, the Request for Proposals invited bidders to submit their detailed proposals to meet objectives established for the project. No overall standard method for achieving these objectives was set, and thus, the various proposals were evaluated, in accord with criteria and a marking system described adequately in the Request for Proposals. The outcome of that assessment by PWGSC was not made public, except that each tenderer was offered a debriefing concerning the assessment of its own project only, and a listing, in order, of how the department ranked the several submissions made. That process is not comparable, in my view, to that followed with respect to tenders on defined projects. The comparison with other bids in the latter case is relatively easy, made on the basis of comparative prices established by each one. In this case, the marks assigned in the evaluation process by PWGSC staff were not revealed except, for each project, in the debriefing session with the respective proposer.” Ultimately, the Court decides, “ However, in the interest of fairness to the applicants, who have spent a substantial sum in preparation of a tender and who held property for development of the project, an order will go directing PWGSC to provide information permitting general comparison of marks assigned to the applicants’ project proposal with a general measure, such as the range, or the average, or the median of marks assigned to all proposals. The most appropriate comparative information in regards to its

	assessments of the various proposals to be released to the applicants, and any other tenderer that is interested, I leave to be determined by the respondents.”
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):	According to Section 10.8.21 of the Federal Contracting Polices, “Debriefings should be provided to unsuccessful bidders on request and should normally include an outline of the factors and criteria used in the evaluation, while respecting each bidder’s right to the confidentiality of specific information.”
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 10.8.14 of the Federal Contracting Policy, “As stated in article 4.2, modifications are not acceptable under any circumstances after bid closing.”
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	This is to uphold a fair and transparent bidding process.
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):	No regulatory basis
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:	https://buyandsell.gc.ca/
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):	No regulatory basis
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

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Section 3 of the Treasury Board of Canada Secretariat’s Policy on the Management of Contracts (2007, and amended in 2009) http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18229 provides [hereinafter “Federal Management Policy”], “3.4 This policy is issued pursuant to section 7 of the Financial Administration Act.3.5 Ministers have responsibility for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behaviour and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honour of the Crown is upheld.”Section 6.1.6 of the Federal Management Policy also provides, “Project-based procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes.” Section 10 Step 10.5 of the Procurement Option Analysis Development moreover provides under “Post-Procurement Contract Administration Objective”, “This step is important as the department or agency should include:</p> <ul style="list-style-type: none"> • A succession or transition strategy to demonstrate: 1) an understanding of the importance of life-cycle management and oversight to secure value from a P3 model and 2) a commitment to integrate contract management and operations representative in the project team to ensure a proper transitioning of the investment from the design and construction phase to the operation phase.”
<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>The general provisions would encompass this. Accordingly, Step 5 of the Federal PPP Canada Business Case Guide addresses “Managing the Investment” and provides,”The objective of Step 5, the important final step in the business case development process, is to describe-at a strategic level-how the investment, project, initiative, or event will be managed, while also demonstrating an acceptable level of due diligence.Step 5 of the Federal PPP Canada Business Case Guide refers to the business case being supported by a Project Charter and a Project Management Plan that will address the organizational, tactical, and operational elements related to the management of the project, including project governance.And according to Section 3 of the Federal Management Policy, “3.4 This policy is issued pursuant to section 7 of the Financial Administration Act.3.5 Ministers have responsibility for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behaviour and sound</p>

	<p>management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honour of the Crown is upheld.” Section 10 Step 10.5 of the Procurement Option Analysis Development moreover provides under “Post-Procurement Contract Administration Objective”, “This step is important as the department or agency should include:</p> <ul style="list-style-type: none"> • A succession or transition strategy to demonstrate: 1) an understanding of the importance of life-cycle management and oversight to secure value from a P3 model and 2) a commitment to integrate contract management and operations representative in the project team to ensure a proper transitioning of the investment from the design and construction phase to the operation phase.”
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	<p>Yes</p>
Relevant legal/regulatory provisions (if any):	<p>According to Section 3 of the Federal Management Policy, “3.4 This policy is issued pursuant to section 7 of the Financial Administration Act.3.5 Ministers have responsibility for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behaviour and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honour of the Crown is upheld.”Section 6.1.6 of the Federal Management Policy also provides, “Project-based procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes.”</p>
Elaboration of a PPP implementation manual or an equivalent document	<p>Yes</p>
Relevant legal/regulatory provisions (if any):	<p>Step 5 of the Federal PPP Canada Business Case Guide addresses “Managing the Investment” and provides, “The objective of Step 5, the important final step in the business case development process, is to describe-at a strategic level-how the investment, project, initiative, or event will be managed, while also demonstrating an acceptable level of due diligence.A secondary goal of Step 5 is to further reinforce the key messages of the business case, ensuring its soundness and conformity to commonly acknowledged best practices for business.Once approved, the business case will be supported by a Project Charter and a Project Management Plan that will address the organizational, tactical, and operational elements related to the management of the project, including project governance.</p>

Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 12.6 of the Federal Contracting Policy provides, “12.6.1 The management and administration of contracts involves many activities to ensure the fulfillment of a contract. This also covers those activities or events that can alter or disrupt the performance of a contract e.g., default of a contractor, disputes and contract amendments. This policy applies equally well to those other activities associated with the management and administration of contracts.</p> <p>12.6.2 Whenever the satisfactory fulfillment of a contract is jeopardized, contracting authorities should take the necessary steps to serve and protect the interests of the Crown in meeting the terms of the contract, and then to protect (where appropriate) the interests of other parties involved in the contract. Contract disputes should be dealt with fairly and as promptly as possible. Contract amendments should be made with the same care that went into the original contract.”</p>
<p>42.1. If yes, is the PPP contract construction performance information made available to the public?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>No regulatory basis</p>
<p>42.2. If yes, is the PPP contract construction performance information made publicly available online?</p>	<p>No</p>
<p>If yes, please specify the website:</p>	<p>n/a</p>
<p>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Section 5.1 of the Federal Contracting Policy, “5.1.1 It is the responsibility of departments and agencies to ensure that adequate control frameworks for due diligence and effective stewardship of public funds are in place and working. Treasury Board Secretariat works with departments and agencies to address management issues and compliance with Contracting Policies identified through its ongoing relationships with departments, management reviews, evaluations, internal audits and transactions.”</p> <p>Additionally, Step 5 of the Federal PPP Canada Business Case Guide addresses “Managing the Investment” and provides, “The objective of Step 5, the important final step in the business case development process, is to describe at a strategic level-how the investment, project, initiative, or event will be managed, while also demonstrating an acceptable level of due diligence. A secondary goal of Step 5 is to further reinforce the key messages of the business case, ensuring its soundness and conformity to commonly</p>

	<p>acknowledged best practices for business. Once approved, the business case will be supported by a Project Charter and a Project Management Plan that will address the organizational, tactical, and operational elements related to the management of the project, including project governance. The following subsections provide guidance on how investment management should be described in terms of strategies and how to illustrate that critical project management fundamentals and methodologies have been well thought out and are in place before the launch of the project: <input type="checkbox"/> Governance and Oversight <input type="checkbox"/> Project Management Strategy <input type="checkbox"/> Outcome Management Strategy <input type="checkbox"/> Risk Management Strategy <input type="checkbox"/> Change Management Strategy <input type="checkbox"/> Performance Measurement Strategy .” And according to Section 3 of the Treasury Board of Canada Secretariat’s Policy on the Management of Projects (2007, and amended in 2009) http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18229 provides [hereinafter “Federal Management Policy”], “3.4 This policy is issued pursuant to section 7 of the Financial Administration Act. 3.5 Ministers have responsibility for the administration of projects in support of the mandated programs of their departments. Deputy heads are responsible for the effective management of projects according to legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behaviour and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring projects are managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the honour of the Crown is upheld.” Section 6.1.6 of the Federal Management Policy also provides, “Project-based procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes.” Section 6.1.1 of the Federal Management Policy provides that Deputy heads in the Government of Canada are responsible for ensuring that: “A department-wide governance and oversight mechanism is in place, documented and maintained. The mechanism is used to manage the initiation, planning, execution, control and closing of projects. In addition, the mechanism ensures that opportunities are considered for integrating projects across the department and the Government of Canada.” 6.1.6 of the Federal Management Policy also provides, “Project-based procurements and real property transactions, including those in public-private partnership agreements, are fully integrated into the governance, management and oversight of projects. In addition, controls must be implemented to ensure that procurement contracts and real property transactions support key project objectives and program outcomes.”</p>
<p>43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract</p>	<p>No</p>

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	Yes
Relevant legal/regulatory provisions (if any)	Section 12.7.11 of the Federal Contracting policy provides, "Contracting authorities should obtain a fair reduction in the contract price for less-than-specified performance."
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	The subsections of the business case study as in Step 5 of the Federal PPP Canada Business Case Guide provide guidance on how investment management should be described in terms of strategies and how to illustrate that critical project management fundamentals and methodologies have been well thought out and are in place before the launch of the project: Performance Measurement Strategy ."
The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including	Yes

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?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
In other cases, flexibility to change the ownership structure and/or assign the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation	Yes

of the PPP contract (once the contract is signed)?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>On the Federal level, Section 12.9.1 of the Contracting Policies provide, “Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost.” According to the Contracting Directives in Part 1, “When a contracting authority has entered into a contract, it may amend the contract without the approval of the Treasury Board, if the cumulative value of the amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Columns III, V, VII of Schedules 1, 2, or 3. When the Treasury Board has approved an amendment, the contracting authority may further amend the contract without the approval of the Treasury Board, if the cumulative value of such amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Column VII of Schedules 1, 2, or 3.”</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>No regulatory basis</p>
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Section 10.8.19 of the Federal Contracting Policy, “Change in scope of work. When there are changes in the job requirements or in the funds available that reduce the scope of the work, an attempt should be made to negotiate a new price with the successful bidder. If the change in the scope of the work is significant or negotiations cannot be concluded to the satisfaction of the contracting authority, new bids should be invited. For construction contracts, new bids are normally invited from the two lowest bidders on the original bid solicitation. When more than two bidders have bid in the same approximate amounts, consideration should be given to including these firms on the new bid solicitation. For goods and services, it is often the practice to solicit new bids without limiting the field of competition.”</p>
A change in the risk allocation of the contract.	<p>Yes</p>

<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>On the Federal level, Section 12.9.1 of the Contracting Policies provide, “Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost.” According to the Contracting Directives in Part 1, “When a contracting authority has entered into a contract, it may amend the contract without the approval of the Treasury Board, if the cumulative value of the amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Columns III, V, VII of Schedules 1, 2, or 3.</p> <p>When the Treasury Board has approved an amendment, the contracting authority may further amend the contract without the approval of the Treasury Board, if the cumulative value of such amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Column VII of Schedules 1, 2, or 3.”</p>
<p>A change in the financial and/or economic balance of the contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>On the Federal level, Section 12.9.1 of the Contracting Policies provide, “Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost.” According to the Contracting Directives in Part 1, “When a contracting authority has entered into a contract, it may amend the contract without the approval of the Treasury Board, if the cumulative value of the amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Columns III, V, VII of Schedules 1, 2, or 3.</p> <p>When the Treasury Board has approved an amendment, the contracting authority may further amend the contract without the approval of the Treasury Board, if the cumulative value of such amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Column VII of Schedules 1, 2, or 3.”</p>
<p>A change in the duration of the contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard</p>	<p>On the Federal level, Section 12.9.1 of the Contracting Policies provide, “Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the</p>

contractual provisions (if any):	<p>attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost.” According to the Contracting Directives in Part 1, “When a contracting authority has entered into a contract, it may amend the contract without the approval of the Treasury Board, if the cumulative value of the amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Columns III, V, VII of Schedules 1, 2, or 3. When the Treasury Board has approved an amendment, the contracting authority may further amend the contract without the approval of the Treasury Board, if the cumulative value of such amendments, which includes all applicable taxes (including GST or HST), does not exceed the limit set out in Column VII of Schedules 1, 2, or 3.”</p>
A change in the agreed price or tariff.	<p>No</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
46.3. Can the procuring authority unilaterally modify a PPP contract?	<p>No</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
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	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>No regulatory basis</p>
Material Adverse government action .	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>No regulatory basis</p>

Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
Refinancing.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
Subcontracting and replacement of the subcontractors.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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):	<p>According to Section of the Federal Contracting Policy, “12.8.1 The key factor when disputes arise is the expeditious handling of the disagreement. This is particularly important because prolonged disputes can delay performance as defined in the contract and payment to the contractor. As such, the Minister of Justice has committed to working with client departments to introduce Dispute Resolution (DR) clauses into the various contracts to which the Government is a party. To this end, the Directive Concerning the Use of Dispute Resolution Clauses in Contracts (the Directive) has been issued by the Department of Justice. The Directive states that, in advising client departments and in preparing contracts for client departments, Justice legal practitioners must make every effort to insert dispute resolution clauses into contracts, where appropriate. Dispute resolution clauses may range from provisions for resolution of disputes as they arise, by way of structured negotiations, to other alternatives such as mediation and arbitration. Any inquiries regarding the Directive Concerning Dispute Resolution policy or the appropriate clauses should be made to your departmental legal services unit of the Department of Justice.</p> <p>12.8.2 In a contract dispute, the decisions of the contracting authority made after the contract has been awarded, are challengeable in court. Under North American Free Trade Agreement, the World Trade Organization - Agreement</p>

on Government Procurement, the Agreement on Internal Trade, the bidding process can be challenged at the Canadian International Trade Tribunal. It is important, therefore, that legal advisers be consulted and that the actions of a contracting authority and its decisions on a contractor's claim be defensible in court.

12.8.3 Negotiations. Efforts should be made to resolve disputes as they arise, first by negotiating with the contractor. This can be through discussion between representatives of the contractor and the contracting authority or by a more formal review established by the department or agency. Contracting authorities should develop systems that ensure:

prompt attention is given to disputes;
unresolved disputes are brought forward quickly to a designated senior level in the department or agency for decision; and
the decision is quickly communicated to the contractor so that the contractor may take further action if so desired.

12.8.4 Mediation. When a dispute has not been resolved by negotiation, mediation by a third party may be used when it is acceptable to both sides. Mediation should conform to the following principles:

it should be voluntary on the part of the contracting department or agency and the contractor with respect to entry into mediation, selection of mediator, and acceptance of the mediator's recommendations;
the powers of a mediator should be limited to persuasion and cannot include adjudication. (There should not, however, be any restriction on the mediator in terms of making contacts and collecting information relevant to the dispute);
the costs of mediation should be shared equally by both parties.

12.8.5 Arbitration. Arbitration that is binding on both parties is an alternative to litigation, provided that both the contractor and the contracting authority agree to it. The agreement to allow for its use may be inserted in a contract at the outset, or it may be negotiated between the parties at the time a dispute arises. If allowance is to be made for, or there is the prospect of arbitration, the contracting authorities should first discuss the details of it with their legal advisor. This advisor has guidelines from the Senior Assistant Deputy Minister, Legal Services, Commercial and Property Law, Department of Justice, covering the format (including procedures) and contents of an arbitration agreement and of any arbitration clause to be included in a contract.

12.8.6 Contracting authorities, with the advice of their legal advisor, may refer all questions of fact and certain questions of law to arbitration without the formal concurrence of the Department of Justice. Treasury Board approval is not required to use arbitration. Some of the questions of law which can now be the subject of arbitration include:

the formation, validity, interpretation, application or enforceability of the contract;
the performance, breach, termination or other discharge of the contract;

	<p>the rights, duties, obligations or remedies of the parties created by or pursuant to the contract;</p> <p>any other issue of private law that may arise between the parties relative to the performance of the contract; or</p> <p>the interpretation and application of statutes that relate primarily or solely to commercial transactions including, for example, the Commercial Arbitration Act and the International Sale of Goods Contracts Convention Act.</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	<p>According to Section of the Federal Contracting Policy, “12.8.1 The key factor when disputes arise is the expeditious handling of the disagreement. This is particularly important because prolonged disputes can delay performance as defined in the contract and payment to the contractor. As such, the Minister of Justice has committed to working with client departments to introduce Dispute Resolution (DR) clauses into the various contracts to which the Government is a party. To this end, the Directive Concerning the Use of Dispute Resolution Clauses in Contracts (the Directive) has been issued by the Department of Justice. The Directive states that, in advising client departments and in preparing contracts for client departments, Justice legal practitioners must make every effort to insert dispute resolution clauses into contracts, where appropriate. Dispute resolution clauses may range from provisions for resolution of disputes as they arise, by way of structured negotiations, to other alternatives such as mediation and arbitration. Any inquiries regarding the Directive Concerning Dispute Resolution policy or the appropriate clauses should be made to your departmental legal services unit of the Department of Justice.</p> <p>12.8.2 In a contract dispute, the decisions of the contracting authority made after the contract has been awarded, are challengeable in court. Under North American Free Trade Agreement, the World Trade Organization - Agreement on Government Procurement, the Agreement on Internal Trade, the bidding process can be challenged at the Canadian International Trade Tribunal. It is important, therefore, that legal advisers be consulted and that the actions of a contracting authority and its decisions on a contractor’s claim be defensible in court.</p> <p>12.8.3 Negotiations. Efforts should be made to resolve disputes as they arise, first by negotiating with the contractor. This can be through discussion</p>

between representatives of the contractor and the contracting authority or by a more formal review established by the department or agency. Contracting authorities should develop systems that ensure:

prompt attention is given to disputes;
unresolved disputes are brought forward quickly to a designated senior level in the department or agency for decision; and
the decision is quickly communicated to the contractor so that the contractor may take further action if so desired.

12.8.4 Mediation. When a dispute has not been resolved by negotiation, mediation by a third party may be used when it is acceptable to both sides.

Mediation should conform to the following principles:

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the powers of a mediator should be limited to persuasion and cannot include adjudication. (There should not, however, be any restriction on the mediator in terms of making contacts and collecting information relevant to the dispute);

the costs of mediation should be shared equally by both parties.

12.8.5 Arbitration. Arbitration that is binding on both parties is an alternative to litigation, provided that both the contractor and the contracting authority agree to it. The agreement to allow for its use may be inserted in a contract at the outset, or it may be negotiated between the parties at the time a dispute arises. If allowance is to be made for, or there is the prospect of arbitration, the contracting authorities should first discuss the details of it with their legal advisor. This advisor has guidelines from the Senior Assistant Deputy Minister, Legal Services, Commercial and Property Law, Department of Justice, covering the format (including procedures) and contents of an arbitration agreement and of any arbitration clause to be included in a contract.

12.8.6 Contracting authorities, with the advice of their legal advisor, may refer all questions of fact and certain questions of law to arbitration without the formal concurrence of the Department of Justice. Treasury Board approval is not required to use arbitration. Some of the questions of law which can now be the subject of arbitration include:

the formation, validity, interpretation, application or enforceability of the contract;

the performance, breach, termination or other discharge of the contract;

the rights, duties, obligations or remedies of the parties created by or pursuant to the contract;

any other issue of private law that may arise between the parties relative to the performance of the contract; or

the interpretation and application of statutes that relate primarily or solely to commercial transactions including, for example, the Commercial Arbitration Act and the International Sale of Goods Contracts Convention Act.

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):	Federal Commercial Arbitration Act of Canada “(2) The Code applies only in relation to matters where at least one of the parties to the arbitration is Her Majesty in right of Canada, a departmental corporation or a Crown corporation or in relation to maritime or admiralty matters.” Article 35 of this Act on “Recognition and Enforcement” provides, “(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.”
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Federal Commercial Arbitration Act of Canada Article 35 of this Act on “Recognition and Enforcement” provides, “(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.” Canada is also signatory to both NAFTA and the New York Convention, which provide that foreign arbitral awards are enforceable amongst its signatory states.
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Federal Commercial Arbitration Act of Canada Article 35 of this Act on “Recognition and Enforcement” provides, “(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.” Canada is also signatory to NAFTA, the New York Convention, and the ICSID Convention, which provide that foreign arbitral awards are enforceable amongst its signatory states.
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?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Section 12.7 of the Federal Contracting Policy, “12.7.1 In every case of the impending or actual bankruptcy of a contractor, the contracting authority should contact the departmental legal adviser and ensure that any proposed action will not prejudice the Crown’s legal position. When the bankrupt contractor is a company resident outside Canada, action should be taken in accordance with the bankruptcy law of the country concerned. Legal advice should be obtained locally, if necessary.”
50. Does the regulatory framework (including	Yes

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?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	Yes
Please Specify:	Contributors have provided that lender step-in rights are addressed in the PPP project agreement with explicit reference to that in the regulatory framework. Further, due to the enforcement of a lenders' direct agreement (LDA), during the construction period there is a lenders Long Stop Date, where if substantial completion is not achieved, a number of provisions may put the project under

	<p>threat of termination. Similar events are possible during the operating period, where there may be enforcement thresholds, which can be triggered by lenders into an event of default. Lenders are often able to take control during an event of default, if not remediated during a specified period of time, which include the following:</p> <ul style="list-style-type: none"> - The occurrence of an insolvency event (e.g., covenant breach) - Project Co not performing a substantial portion of its business, resulting in a material adverse effect on its ability to perform its obligations under the Project Agreement - Project Co failing to achieve Substantial Completion by the Longstop Date (i.e. 365 days following the Scheduled Substantial Completion Date) - The Independent Certifier determining, with reference to the works schedule, that Project Co will not achieve Substantial Completion by the Longstop Date - Project Co failing to return to the Site within 3 days of a notice of abandonment from the PPP authority - Project Co exceeding a specified number of failure points over a certain period of time - Project Co failing to pay any sum due to the Authority under the Project Agreement, which exceed a specified amount - Project Co making a representation or warranty that is false or misleading and has or will have a material adverse effect on the performance of the operations
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>The PPP contracts regulates this circumstance in accordance with Section 12.4 of the Federal Contracting Policy, which provides, “12.4.1 All contract documents should contain conditions and clauses that reflect the requirements of the work to be produced or supplied under the contract. In addition, certain clauses are applicable for all contracts. As stated in article 4.2, Related requirements, other necessary clauses will include: a provision for paying interest when the Crown causes a delay in paying the contractor; a clause to permit the Crown to pay the Goods and Services Tax or the Harmonized Sales Tax; a clause covering possible conflict of interest situations; and, if relevant, a clause addressing intellectual property issues, including the ownership of intellectual property. An appropriate termination clause is especially important so that the contracting authority may end the contract if, for example, there is a change in the government’s priorities or a cutback in funding. The Department of Justice representative in each department or agency should be consulted about contract terms.”</p>
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the	<p>Yes</p>

termination of the PPP contract?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
Unsolicited Proposals	
34. Are unsolicited proposals in Canada: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	Yes
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	n/a
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	n/a
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	n/a
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	n/a

procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	n/a
Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and	n/a

final offer (BAFO) process and/or automatic shortlisting.	
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	n/a
39.3 Bid Bonus.	n/a
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	n/a
39.5 Other.	n/a
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a