

# PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN COLOMBIA

SURVEY QUESTION	ANALYSIS
<b>PPP Regulatory Framework</b>	
<b>2. Does the regulatory framework in your country allow procuring PPPs?</b>	Yes
<b>If yes, please specify the relevant regulatory framework and the year of adoption:</b>	<p>PPPs in Colombia are regulated by the following laws and regulations in which this analysis will be based: a) Law 1508/ 2012 “PPP Law”; b) Presidential Decree 1082 of 2015 (it compiles all the regulation related to PPP such as the decrees 1467 and 2043 of 2012, the Decree 1610 of 2013, the Decrees 1026 and 1553 of 2014, the Decree 063 of 2015 and the Decree 1510 of 2013); c) Resolution 3656 of 2012 and Resolution 1464 of 2016 of the National Planning Department; d) Law 80 of 1993 “Public Procurement General Law modified by the Law 1150 of 2007; e) Law 1753 de 2015 “National Development Plan” and f) Sector specific regulatory frameworks (including for example Law 1 of 1991 that established the port concessions, the port sector; law 1682 of 2013 that regulates some aspects of the PPPs contracts in the infrastructure sector and; Resolution 789 of 2017 issues by the Water, Sewage and Sewer Regulation Commission (CRA) that governs PPPs contract in the mentioned sector). According to article 3 of the PPP Law the process for selecting the private partner will be regulated by the Law 80 of 1993 and the Law 1150 of 2007 for those matters not specifically regulated by the PPP Law. Finally, CONPES documents 3107 of 2001, 3133 of 2001, 3807 of 2014, 3760 of 2013 and 3714 of 2011, establish policies and guidelines regarding PPPs and risk management and Agreement 039 of 2016 sets out investment guidelines for projects funded with the resources of the Sistema General de Regalías (SGR), by establishing mandatory relationships among incurable expenses and certain public goods and services, in order to comply with the National Development Plan and the territorial entities’ development plans (these last two documents are related to all types of public investments, not only PPPs).</p>
<b>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</b>	<p><a href="https://www.dnp.gov.co/programas/participacion-privada-en-proyectos-de-infraestructura/asociaciones-publico-privadas/Paginas/marco-normativo-app.aspx">https://www.dnp.gov.co/programas/participacion-privada-en-proyectos-de-infraestructura/asociaciones-publico-privadas/Paginas/marco-normativo-app.aspx</a>;  <a href="http://sintesis.colombiacompra.gov.co/">http://sintesis.colombiacompra.gov.co/</a></p>
<b>2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are</b>	Yes

<b>planned to be adopted BEFORE June 1, 2017?</b>	
<b>Please describe:</b>	<p>a) The Water, Sewage and Sewer Regulation Commission (CRA) issued - in April - resolution 789 of 2017 by which it governs the PPPs contract in the mentioned sector. b) Resolution 1464 of 2016 sets out the guidelines for public entities to evaluate: (i) if a project qualifies as a PPP; and (ii) if a PPP project aligns with the entities' general policies and mid/long term plans. c) Agreement 039 of 2016 sets out investment guidelines for projects funded with the resources of the Sistema General de Regalías (SGR), by establishing mandatory relationships among incurable expenses and certain public goods and services, in order to comply with the National Development Plan and the territorial entities' development plans.</p>
<b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b>	<p>Yes</p>
<b>Please describe:</b>	<p>a) According to the PPP law, the municipal mayors are not able to sign PPP contracts in the last year of their mandates. Due to this, currently there is a law being considered in the congress to overcome this restriction; b) PPP law reform to consider early termination when reputational issues arrive; c) An integral modification of the Public Procurement General Law and Law 1150 of 2007 is being discussed in Congress, as well as a legal framework for previous consultation (ILO Convention No. 169)</p>
<b>3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	<p>n/a</p>
<b>3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation</b>	<p>No</p>
<b>If yes, please provide the relevant</b>	<p>n/a</p>

<b>legal/regulatory provisions:</b>	
<b>3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	<p>According to Article 3 of the PPP Law , regulated sectors which have their own private investment regime will not be subject to the PPP Law unless the required particularities are regulated (i.e. private investment in those sectors are allowed but are not covered by PPP Law). These sectors are telecommunications, energy (public utilities), ports and terminals, mining, oil and gas. Also, Article 8 refers to the participation of SOEs on PPPs. In Colombia, Energy generation and distribution is in charge of either SOEs or private companies and thus the provisions of Article 8 will also apply. According to this, if a SOE is willing to pursue a PPP project to generate or distribute energy, the PPP Law is not applicable to them.</p>
<b>3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	<p>According to Article 3 of the PPP Law, regulated sectors which have their own private investment regime will not be subject to the PPP Law unless the required particularities are regulated (i.e. private investment in those sectors are allowed but are not covered by PPP Law). These sectors include telecommunications where private investment is expressly regulated by Law 1341 of 2009 and Decree 1078 of 2015</p>
<b>3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other</b>	<p>Yes</p>
<b>If yes, specify and provide the</b>	<p>According to Article 3 of the PPP Law, regulated sectors which have their own private investment regime will not be subject to the PPP Law unless the required particularities are regulated (i.e. private investment in</p>

<b>relevant legal/regulatory provisions:</b>	those sectors are allowed but are not covered by PPP Law). These sectors are telecommunications, energy (public utilities), ports and terminals, mining, oil and gas.
<b>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provision (if any):</b>	Article 32 of Decree 624 of 1989 (Tax Code), as modified by article 31 of Law 1819 of 2016, establishes a special treatment for the income tax for PPP contracts which include the following phases: construction, management, operation and maintenance.
<b>5. Please identify the PPP procuring authorities in Colombia and provide their website(s) (if available):</b>	In Colombia, PPPs can be procured by several authorities. In general, any national or local entity may initiate the procedure to procure a project under a PPP structure according to its jurisdictional scope and functions, that is, in relation with assets or services that ought to be provided/managed/supervised by such entity (for example, if the project consists of the construction, operation, and maintenance of an urban road the procuring entity would be the corresponding municipality)
<b>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</b>	Yes
<b>If yes, please indicate its name, and its website (if available):</b>	National Planning Agency (Departamento Nacional de Planeación): <a href="https://www.dnp.gov.co/paginas/Inicio.aspx#googtrans/gl/en">https://www.dnp.gov.co/paginas/Inicio.aspx#googtrans/gl/en</a> Ministry of Finance and Public Credit (in particular for revision of fiscal risks): <a href="http://www.minhacienda.gov.co">www.minhacienda.gov.co</a> National Infrastructure Agency (Agencia Nacional de Infraestructura): <a href="http://ani.gov.co/">http://ani.gov.co/</a>
<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	Yes
<b>6.2 PPP capacity building for other public authorities.</b>	Yes
<b>6.3 PPP promotion among the public and/or private sectors in</b>	Yes

<b>national and international forums.</b>	
<b>6.4 Technical support in implementing PPP projects.</b>	Yes
<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	No
<b>6.6 Revision of fiscal risks born by the Government.</b>	Yes
<b>6.7 Consultation with affected communities on potential impact of PPP projects.</b>	No
<b>6.8 Approval of PPP projects.</b>	Yes
<b>6.9 Undertaking the procurement of PPPs.</b>	No
<b>6.10 Oversight of PPP implementation.</b>	Yes
<b>6.11 Other</b>	No
<b>6.11 please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions:</b>	Functions attributed to the different PPP units by the Law 1508 of 2012 and the applicable regulatory decrees
<b>PPP Preparation</b>	
<b>8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	a) Article 11.3 PPP Law: When the PPP modality has been chosen for public procurement, the Ministry of Finance has to give its approval regarding the valuations of contingent liabilities performing state entities; b) Article 26 PPP Law: Requires that the Council for Fiscal Policy (Consejo de Política Fiscal - CONFIS,) which is an attached agency of the Ministry of Finance, approves future payment commitments to be made by the relevant governmental entity. Also, that article provides that the Ministry of Finance could object the financial conditions and/or contractual texts proposed by the authority.
<b>8.1. Does the Ministry of Finance or Central Budgetary</b>	No

<b>Authority approve the PPP project before signing the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Law 448 of 1998 regarding treatment of contingent liabilities and the establishment of the Contingency Fund and its regulatory development by Decree 423 of 2001
<b>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Availability payments and contingent liabilities are reported in the medium-term fiscal framework. Law 448 of 1998 regarding treatment of contingent liabilities and the establishment of the Contingency Fund and its regulatory development by Decree 423 of 2001. Contingent liabilities arising from PPPs are included in the contingent liabilities report published by the Ministry of Finance: <a href="http://www.minhacienda.gov.co/HomeMinhacienda/faces/GestionMisional/creditopublicoytesoronacional/GestionRiesgo?_adf.ctrl-state=3y2qb34vy_4&amp;_afLoop=3032366932310537#!">http://www.minhacienda.gov.co/HomeMinhacienda/faces/GestionMisional/creditopublicoytesoronacional/GestionRiesgo?_adf.ctrl-state=3y2qb34vy_4&amp;_afLoop=3032366932310537#!</a>
<b>8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to</b>	No

<b>International Public Sector Accounting Standards (IPSAS).</b>	
<b>Accounting and reporting according to other international standard (e.g. European System of Accounts).</b>	No
<b>Please specify:</b>	n/a
<b>Other.</b>	Yes
<b>Please specify:</b>	Colombian risk accounting methodology: <a href="http://www.minhacienda.gov.co/HomeMinhacienda/ShowProperty;jsessionid=FHbZBpgaQ1dDyFqVMGKxvZ95sx9GcuJLYpVIUQ96o7pN15kjbqjU!-89808455?nodeId=%2FOCS%2FP_MHCP_WCC-063951%2F%2FidcPrimaryFile&amp;revision=latestreleased">http://www.minhacienda.gov.co/HomeMinhacienda/ShowProperty;jsessionid=FHbZBpgaQ1dDyFqVMGKxvZ95sx9GcuJLYpVIUQ96o7pN15kjbqjU!-89808455?nodeId=%2FOCS%2FP_MHCP_WCC-063951%2F%2FidcPrimaryFile&amp;revision=latestreleased</a>
<b>9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?</b>	Yes
<b>If yes, please specify the relevant authority</b>	According PPP Law - Article 26: At the National Level, the Ministry of each sector must issue a prior favorable concept of PPP projects, in particular on whether the initiative can be contained in the sector limit amount (future sector budget compromises) defined by CONPES.- The National Planning Department -DNP- verifies that the project will generate value for money under the mechanism of PPP versus the traditional public procurement, must issue a prior favorable concept of the PPP projects- CONPES must issue a favorable concept on the term of the projects which for their nature and conditions require a period longer than 30 years (limit established by the PPP law)According to PPP Law - Article 27: At the Subnational level (Territorial Entities), the Office of Territorial Planning must issue a favorable concept on the PPP project. This office verifies that the project will generate value for money under the mechanism of PPP versus traditional public procurement.- If the project is co-financed by the Nation, DNP must issue prior favorable concept of PPP projects.- Financial institutions at the National order as sub national validators: For projects at the subnational level, it is necessary to have a financial validation from a financial institution at the National level, before the procuring authority submits the project to the Ministry of Finance
<b>and provide the relevant legal/regulatory provisions (if any):</b>	PPP Law - Articles 26 and 27; Decree 1082/2015 - Title 2 - about PPP, Chapter 1 - Regulation of the PPP Law, Sections 5 - PPP Projects, 6 - PPP Projects Approvals and 11 - Regulation of Article 26 of the PPP Law.

<b>9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>No regulatory basis</p>
<b>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory</b>	<p>Yes</p>



<p><b>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.</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>The regulatory framework provides for the inclusion of PPPs in the national public investment system. Prioritization of PPP projects must be consistent with the National Development Plan (a law created as a strategic guideline for public policy made by the President of the Republic through his government team). Its development, socialization, evaluation and monitoring is a direct responsibility of the DNP and the projects have to register in the Bank of Programs and National Investment Projects - BPIN. According to the Colombian Political Constitution of 1991, article 339, the National Development Plan indicates, among other points, the goals and priorities of public action, and national level public investment projects. This goes along with the following legal provisions: PPP Law - Article 25: The registration of projects will be done by the PPP Registry (RUAPP). This record will incorporate those projects that the National or subnational Government deem priority. Decree 1082/2015 -Article 2.2.2.1.11.2: The Ministry or Head of sector will be the responsible of project prioritization. Article 2.2.2.1.11.3: Budget future commitments will be part of the Medium Term Expenditure Framework (Marco de Gasto de Mediano Plazo "MGMP".) in its programming process the Commitments must be prioritized by the Ministry of the sector.</p>
<p><b>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other</b></p>	<p>No</p>

<b>government investment priorities in practice.</b>	
<b>If yes, please elaborate:</b>	n/a
<b>The procuring authority does not evaluate PPPs against existing government priorities.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>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?</b>	Yes
<b>If yes, please specify:</b>	Contributors mentioned that the legal framework (as a requirement of the process) in their experience has been respected in practice, since in the assessment of the proposal the public entity checks the alignment of the project with the national a local Development Plans.
<b>If no, please elaborate:</b>	n/a
<b>12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 11.2 of PPP Law establishes that among the requirements to open the selection process for the executions of PPP projects, the public entity must have a cost-benefit evaluation of the project, which assess its social, economical, and environmental impact over the directly affected population.
<b>Is there a specific methodology for the assessment?</b>	Yes

<b>If yes, please elaborate</b>	As a helping tool, the procuring entity can utilize the “Metodología General para Formulación y Evaluación de Proyectos de Inversión Pública - MGA [ <a href="https://www.sgr.gov.co/Proyectos/MGA.aspx">https://www.sgr.gov.co/Proyectos/MGA.aspx</a> ], of the National Planning Department <a href="https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Guia%20de%20APP%20%20Capitulo%202%202016.pdf">https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Guia%20de%20APP%20%20Capitulo%202%202016.pdf</a>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirmed that the assessment is done in practice
<b>12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 26 of PPP Law and articles 2.2.2.1.6.3 and 2.2.2.1.6.4 of Decree 1082/2015 indicates that CONFIS, after a favorable opinion of the Ministry of the Sector, DNP, and the registration in the National Investment Project Bank-BPIN-, could authorize long term public commitments. Article 11.1 of the PPP Law requires the procuring authority to prepare the relevant economic and financial feasibility. Based on these studies the Ministry of Finance will approve the assessment of contingent liabilities (Article 11.3 of the PPP Law ) and CONFIS will approve the future public commitments assessing budgetary affordability (article 26 of the PPP Law). Moreover, every year CONFIS and CONPES will set an annual limit for PPP public commitments (including future commitments and contingent liabilities)
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Manual regarding contingent liabilities and containing a methodology to calculate the fiscal impact of PPPs: <a href="http://www.minhacienda.gov.co/HomeMinhacienda/ShowProperty?nodeId=%2FOCS%2FMIG_6047857.PDF%2F%2FidcPrimaryFile&amp;revision=latestreleased">http://www.minhacienda.gov.co/HomeMinhacienda/ShowProperty?nodeId=%2FOCS%2FMIG_6047857.PDF%2F%2FidcPrimaryFile&amp;revision=latestreleased</a>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirmed that the assessment is done in practice
<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Numeral 11.5 Article 11 PPP Law establishes that before opening the selection process, the procuring entity must prepare the risk identification, estimation, and allocation matrix
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	The Colombian Procurement Agency (Colombia Compra Eficiente), the National Planning Department and the Ministry of Treasury have designed different handbooks to guide the elaboration of the risk matrix. <a href="http://www.colombiacompra.gov.co/sites/default/files/manuales/cce_manual_riesgo_web.pdf">http://www.colombiacompra.gov.co/sites/default/files/manuales/cce_manual_riesgo_web.pdf</a>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirmed that the assessment is done in practice

<b>12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)</b>	<p>Yes</p>
<b>Relevant legal/regulatory provision (if any)</b>	<p>PPP Law art. 11.3 indicates that one of the requirements that the procuring entity needs to comply before opening the selection process is the justification of using the PPP mechanism for the execution of the project. Decree 1082/2015 in its Article 2.2.2.1.5.1. establishes that no procuring entity can open the selection process for the execution of a PPP project without having compared the public initiative project with the unsolicited proposal project, considering criteria that demonstrates which initiative is more convenient according to public interest and policies.</p>
<b>Is there a specific methodology for the assessment?</b>	<p>Yes</p>
<b>If yes, please elaborate</b>	<p>Public private comparative model, multi-criteria analysis and value-for-money.  <a href="https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Nota%20Técnica%204.pdf">https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Nota%20Técnica%204.pdf</a></p>
<b>Is the assessment done in practice?</b>	<p>Yes</p>
<b>Details:</b>	<p>Contributors confirmed that the assessment is done in practice</p>
<b>12.5. Financial viability or bankability assessment</b>	<p>Yes</p>
<b>Relevant legal/regulatory provision (if any)</b>	<p>Article 11.1 of PPP Law and Article 2.2.2.1.5.5 of Decree 1082/2015 indicates that the procuring must have all the financial studies and detailed financial models before opening the selection process.</p>
<b>Is there a specific methodology for the assessment?</b>	<p>Yes</p>
<b>If yes, please elaborate</b>	<p>There are several guides that DNP and Ministry of Finance have developed as to those matters:  <a href="https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Guia%20de%20APP%20%20Capitulo%203%202016.pdf">https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Guia%20de%20APP%20%20Capitulo%203%202016.pdf</a>; <a href="https://www.dnp.gov.co/programas/participación-privada-%20y-en-proyectos-de-infraestructura/asociaciones-publico-privadas/Paginas/guias-app.aspx">https://www.dnp.gov.co/programas/participación-privada-%20y-en-proyectos-de-infraestructura/asociaciones-publico-privadas/Paginas/guias-app.aspx</a>;</p>
<b>Is the assessment done in practice?</b>	<p>Yes</p>
<b>Details:</b>	<p>Contributors confirmed that the assessment is done in practice</p>
<b>12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)</b>	<p>Yes</p>

<b>Relevant legal/regulatory provision (if any)</b>	Articles 11 and 14 of PPP Law establish the assessments that need to be done before starting the procurement of PPP projects. Likewise, in the document denominated: Technical Note 5 - Description of the products to be deliver by the arrangers in the project's feasibility stage for making the project justification "NOTA TÉCNICA 5 - DESCRIPCIÓN DE LOS PRODUCTOS A ENTREGAR POR PARTE DE LOS ESTRUCTURADORES EN LA ETAPA DE FACTIBILIDAD DEL PROYECTO PARA LA REALIZACIÓN DE LAS JUSTIFICACIONES DEL PROYECTO." issued by the DNP, it is included as part of these studies a market assessment to have an indication of the interest and appetite of the market to design, construct, operate and keep the selected project. <a href="https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Nota%20T%C3%A9cnica%205%202016.pdf">https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Nota%20T%C3%A9cnica%205%202016.pdf</a> -- Pag 16.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirmed that the assessment is done in practice
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 2.2.2.1.5.5 of Decree 1082 of 2015 requires that an environmental assessment is made before starting the procurement of PPP projects.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirmed that the assessment is done in practice
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 2.2.2.1.5.5 of Decree 1082 of 2015 provides the need of identifying vulnerable communities and making previous consultation with the potential communities that may be affected by the PPP project.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirmed that the assessment is done in practice
<b>13. Does the procuring authority include</b>	Yes

<p><b>the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?</b></p>	
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>According to Article 2.2.2.1.4.6 of Decree 1082 of 2015 the procuring entity must provide all the referred feasibility assessments when inviting bidders to participate in the preselection procedures for a PPP project. Also, in particular, Article 2.2.1.1.2.1.3 of Decree 1082 of 2015 requires including within the tender documents the Risk identification and allocation of risk.</p>
<p><b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b></p>	<p>In particular, risk identification that must be included in the tender documents as set forth by Article 2.2.1.1.2.1.3 of Decree 1082 of 2015 plus the general obligation of providing all the required feasibility assessments when inviting bidders to participate in the preselection procedures for a PPP project as per Article 2.2.2.1.4.6 of Decree 1082 of 2015</p>
<p><b>13.1. Are the assessments published online?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Article 2.2.1.1.1.7.1 of Decree 1082 of 2015 (in the sense that those assessments, and specifically the risk identification, are part of the tender documents)</p>
<p><b>specify the website</b></p>	<p><a href="https://www.contratos.gov.co/consultas/inicioConsulta.do">https://www.contratos.gov.co/consultas/inicioConsulta.do</a></p>
<p><b>please specify which of the assessments are published online:</b></p>	<p>The applicable assessments will vary depending on the nature of the PPP project. Notwithstanding the foregoing, all the assessments related to the corresponding PPP project will be published in the Public Procurement Electronic System -SECOP- (Sistema Electronico para la Contratacion Publica).</p>
<p><b>14. Does the procuring authority include a draft PPP contract in the request for proposals?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>For public financed initiative PPP projects article 30.2 Law 80 of 1993 (applicable as stated by article 9 of the PPP Law) indicates that the procuring authority will prepare the terms of the contract that will detail specifically the object of the contract and the rights and obligations of the parties. Also, for unsolicited proposals, according to article 2.2.2.1.5.5 of the PPP Regulation, the draft PPP contract must be included among the documentation to be prepared. For private financed initiative PPP projects, private investors must include a draft of the PPP contract according to article 2.2.2.1.5.5 of Decree 1082 of 2015. The procuring authority must also publish the draft of the agreement for 2 months (article 2.2.2.1.5.11)</p>
<p><b>If no, please elaborate</b></p>	<p>n/a</p>

<b>14.1. Are the tender documents published online?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 2.2.1.1.1.7.1 of Decree 1082 of 2015 establishes that the procuring authority must publish the tender documents in SECOP (Electronic System for Public Procurement)
<b>and please specify the website:</b>	<a href="https://www.contratos.gov.co/consultas/inicioConsulta.do">https://www.contratos.gov.co/consultas/inicioConsulta.do</a>
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	Yes
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	Standardized model contract for Concession of Cuarta Generacion (4G) highways: <a href="http://www.ani.gov.co/proyecto/general/cuarta-generacion-de-concesiones-1068">http://www.ani.gov.co/proyecto/general/cuarta-generacion-de-concesiones-1068</a>
<b>16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No

<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	In particular, for transportation infrastructure, article 40 of Law 1682 of 2013 explicitly establishes that any of the parties to the contract may be responsible and that those responsibilities will be assigned within the contract.
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	In particular, for transportation infrastructure, article 40 of Law 1682 of 2013 explicitly establishes that any of the parties to the contract may be responsible and that those responsibilities will be assigned within the contract.
<b>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	In particular, for transportation infrastructure, article 40 of Law 1682 of 2013 explicitly establishes that any of the parties to the contract may be responsible and that those responsibilities will be assigned within the contract.
<b>16.4. Obtaining the required land: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	Yes



<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Conpes 3760/2013 that attributes mainly to the private partner the responsibility of obtaining the land required to develop the PPP project. This document is only applicable to the 4G concession program (the object of which is aligned with the case study assumptions).
<b>16.5. Obtaining the required right of way: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	Yes
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Conpes 3760/2013 that attributes mainly to the private partner the responsibility of obtaining the land required to develop the PPP project. This document is only applicable to the 4G concession program (the object of which is aligned with the case study assumptions).
<b>PPP Procurement</b>	
<b>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.</b>	No
<b>If yes, please provide the relevant</b>	n/a

<b>legal/regulatory provisions (if any):</b>	
<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The bid evaluation committee members are not required to have any specific qualifications.</b>	Yes
<b>Please elaborate and provide examples:</b>	According to Article 2.2.1.1.2.2.3. of Decree 1082/2015, a bid evaluation committee is not mandatory. Even if a bid evaluation committee is established, there are no specific requirements regarding the committee members' qualifications. However, the members of the evaluation committee are subject to the regime of disabilities and incompatibilities and conflicts of interest provided for in the Constitution and the law.
<b>19. Does the procuring authority issue a public procurement notice of the PPP project?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Numeral 3, Article 30, Law 80 of 1993: Conforming to the public procurement process in particular, the notice for the bidding process opening will be published in the public entity's website and in the Public Procurement Electronic System -SECOP- (Sistema Electronico para la Contratacion Publica) Article 2.2.1.1.2.1.2, Decreto 1082/2015: The invitation to bidding offers has to contain the information established in this provision, which is related to general and specific information of the public procurement process.
<b>19.1. If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="https://www.contratos.gov.co">https://www.contratos.gov.co</a> ; <a href="http://www.colombiacompra.gov.co/">http://www.colombiacompra.gov.co/</a> ; <a href="https://www.dnp.gov.co/programas/participaci%C3%B3n-privada-%20y-en-proyectos-de-infraestructura/asociaciones-publico-privadas/Paginas/documentos-app.aspx">https://www.dnp.gov.co/programas/participaci%C3%B3n-privada-%20y-en-proyectos-de-infraestructura/asociaciones-publico-privadas/Paginas/documentos-app.aspx</a>
<b>20. Are foreign companies prohibited from participating in the bidding process?</b>	No
<b>If yes, please provide the relevant</b>	n/a

<b>legal/regulatory provisions (if any):</b>	
<b>21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>and the time in calendar days:</b>	n/a
<b>22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 2 of Law 1150/2007 states that one of the available possibilities for the selection of the bidder is public tendering. Further, article 2.2.2.1.4.1 of Decree 1082/2015 states that the procedure for the selection of bidders in PPP projects will be public tendering.
<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 10 of Law 1508/12 (PPPs Law) states that for PPP projects restricted tendering can be used in the conditions established in the regulatory decree. Also, article 2.2.2.1.4.5. states that for PPP Projects which cost above 70,000 minimum wage the procuring authority can use restricted tendering.
<b>22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a

<b>22.4. Competitive dialogue: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.5. Direct negotiation with more than one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.6. Direct negotiation with only one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.7 Other. Specify:</b>	No
<b>Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to the Article 2.2.1.1.2.1.3 Decree 1082/2015, it is obligatory to indicate in the tender documents the schedule that must be followed during the entire procurement process.
<b>If no, please elaborate:</b>	n/a
<b>22.9. Do the tender documents specify the prequalification/s hortlisting criteria (when applicable)</b>	Yes

<b>in order to make them available to all the bidders?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	For public finance initiative PPP projects article 2.2.2.1.4.6. numeral 3 of Decree 1082/2015: establishes that 'The request for proposals in the prequalification phase shall include at least, among other information, the minimum requirements for the prequalification phase'
<b>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to the general principles of applicable contracting laws in Colombia and to Article 24 of Law 80 of 1993, procuring entities are bound to the terms and conditions specified in the tender documents. Therefore, the procuring entities must always apply the specified criteria to select the bidders and the final contracting party that will perform the PPP project.
<b>If no, please elaborate:</b>	n/a
<b>23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to article 8 of the law 1150 of 2007 and Articles 2.2.1.1.1.7.1 and 2.2.1.1.2.1.4 of Decree 1082 of 2015: 'the request for proposal notice and the tender documents have to be published on SECOP so that the interested parties can submit questions or request clarifications in the terms established for the bidding process'.
<b>23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to article 2.2.1.2.1.1.2. of Decree 1082/2015, by request of an interested party there has to be a hearing whose object will be to precise the content and scope of the tender documents. Likewise, Article 24 of Law 80 of 1993 indicates that according to the Transparency Principle of the public procurement process in Colombia, the interested parties shall have the opportunity to know and debate all the actions of the process and, there must be phases in the process to submit questions or request clarifications. Numeral 24, Article 24 of Law 80 of 1993: The actions of the authorities are public and records containing them are open

	to the public. Article 2.2.1.1.1.7.1. of Decree 1082/2015 the public entity is obliged to release the documents of the process on the SECOP.
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	According to our contributors' experience, public entities in Colombia are rigorous in complying with this obligation, as the different bidders are constantly checking for new updates on answers to questions and addendums to terms of reference.
<b>If no, please elaborate:</b>	n/a
<b>24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	According to article 39 of Decree 1510 of 2013, at the tender selection stage, the following audiences are required: a) risk allocation (where consultation about the tender documents can be done)
<b>24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Numeral 24, Article 24 of Law 80 of 1993: The actions of the authorities are public and records containing them are open to the public. Article 2.2.1.1.1.7.1. of Decree 1082/2015 the public entity is obliged to release the documents of the process on the SECOP.
<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	All contributors answering this question indicated that this always happens in practice

If no, please elaborate:	n/a
<b>25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?</b>	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
If no, please elaborate:	n/a
<b>26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</b>	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 30 numeral 6 of Law 80 of 1993 the proposals must comply with all provisions of the tender documents. Nevertheless, the procuring authority may accept technical and economic alternatives and exceptions provided that they are not submitted as a condition for the contract award. Likewise, Paragraph 2 of Article 2, Law 1150 of 2007 indicates that with no exception all the submitted proposals shall be evaluated in objective manner and exclusively applying the tender documents rules.
Evaluation criteria is not set in the tender documents	No
<b>27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one): The procuring authority follows a specific</b>	No

<b>procedure before awarding a PPP contract where only one proposal is submitted.</b>	
<b>Please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	Yes
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	According to article 24 of Law 80 of 1993 and article 5 of Law 1150 of 2007, if the sole proponent meets all the requirements provided in the tender documents for the PPP project, the procuring entity may select such proponent notwithstanding the fact that only one proposal is submitted.
<b>The procuring authority does not award a PPP contract if only one proposal is submitted.</b>	No
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The regulatory framework does not include any provisions.</b>	No
<b>28. Does the procuring authority publish the award notice?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	According to Article 2.2.1.1.1.7.1. and article 2.2.2.1.8.3. of Decree 1082/2015 the award notice must also be published in the Electronic Public Procurement System (SECOP).
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes



<b>If yes, please specify the website:</b>	<a href="https://www.contratos.gov.co/puc/buscador.html">https://www.contratos.gov.co/puc/buscador.html</a> ; <a href="http://www.secop.gov.co">www.secop.gov.co</a> ; <a href="http://www.colombiacompra.gov.co">www.colombiacompra.gov.co</a>
<b>29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Law 1150 of 2007, in its article 9, establishes as mandatory that the awarding be done through motivated resolution. Also, according to article 30.11 Law 80 of 1993 the result of the PPP procurement process including the grounds for the selection of the winning bid will be communicated to all the bidders within the 5 following calendar days to the awarding
<b>If no, please elaborate:</b>	n/a
<b>29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Law 1150 of 2007, in its article 9, establishes as mandatory that the awarding be done through motivated resolution. Also, according to article 30.11 Law 80 of 1993 the result of the PPP procurement process including the grounds for the selection of the winning bid will be communicated to all the bidders within the 5 following calendar days to the awarding
<b>30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	n/a
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	n/a

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	There is no specific legal provision that restricts the procurement entity negotiate with the selected bidder after awarding the contract. However, according to the article 9 of the Law 1150 of 2007 the award is irrevocable and binds the public entity and the tenderer. Therefore, this regulation indirectly prohibits the entity negotiate with the selected bidder between the award and the signature of the PPP contract.
<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	Yes
<b>If yes, please specify:</b>	In accordance with Law 1150 of 2007 and Decree 1082 of 2015, a public entity cannot negotiate the contract after the award.
<b>If no, please elaborate:</b>	n/a
<b>32. Does the procuring authority publish the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The PPP contract is published via Internet on SECOP - Article 2.2.1.1.1.7.1 Decree 1082/2015.
<b>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</b>	Yes

<b>Publication of the full PPP contract without including all its annexes and appendixes</b>	No
<b>Publication of a summary of the PPP contract without publishing the full PPP contract</b>	No
<b>Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes</b>	No
<b>Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes</b>	No
<b>32.2. If yes, is it published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.secop.gov.co">www.secop.gov.co</a> ; <a href="http://www.colombiacompra.gov.co">www.colombiacompra.gov.co</a>
<b>32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 2.2.1.1.1.7.1 of Decree 1082/2015 states that the procuring authority is obliged to publish all the administrative acts from the procuring process within 3 days of their occurring.
<b>PPP Contract Management</b>	
<b>41. Has the procuring or contract management authority established a system to manage the implementation</b>	Yes

<b>of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 33 (2) of Law 1508 of 2015 establishes that in PPP contracts, the auditing must be contracted with a person independent from the contractor and the public entity. Article 2.2.2.1.2.6. of Decree 1082/2015 indicates that the contract may establish the obligation of the contractor to provide, design, and operate a system of management control for the management control for proper monitoring of infrastructure's availability, quality standards and service levels.</p>
<b>41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team</b>	<p>Yes</p>
<b>Relevant legal/regulatory provisions (if any):</b>	<p>Article 33 of PPP Law. In Colombian regulatory framework, implementation of the PPP contract is supervised by two authorities: the Auditor(Intervenor) who is a third party that monitors and oversees the contract's development directly, and a contract management team, which acts as a supervisor of the contract inside the public entity.</p>
<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	<p>No</p>
<b>Relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	<p>No</p>
<b>Relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</b>	<p>No</p>

<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>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.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The PPP contract management team members are required to meet sufficient qualification without specific details.</b>	Yes
<b>If yes, please provide the relevant</b>	Article 5 subsection 4 of Law 1150 of 2007 sets forth that for the selection of consultants rating factors will be used to assess the technical aspects of the offers. Also, the tender documents may provide specific qualifications which may be required to the management team of the PPP Contract. For example, the

<b>legal/regulatory provisions (if any):</b>	tender documents may require that the staff of the management team fulfill certain specific experience in a specific field or that they have academic qualifications.
<b>The PPP contract management team members are not required to meet any specific qualifications.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 84 and 85 of Law 1474 of 2011 the contracting entity must permanently overview the completion of construction works under a PPP contract. This surveillance is made by means of an auditor or supervisor appointed by the contracting entity.
<b>42.1. If yes, is the PPP contract construction performance information made available to the public?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>43. Does the procuring or contract management</b>	Yes

<b>authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 33 of PPP Law. In Colombian regulatory framework, implementation of the PPP contract is supervised by two authorities: the Auditor (Intervenor) who is a third party that monitors and oversees the contract's development directly, and a contract management team, which acts as a supervisor of the contract inside the public entity. Article 2.2.2.1.2.6. of Decree 1082/2015 indicates that the contract may establish the obligation of the contractor to provide, design, and operate a system of management control for the management control for proper monitoring of infrastructure's availability, quality standards and service levels.</p>
<b>43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract</b>	<p>Yes</p>
<b>Relevant legal/regulatory provisions (if any)</b>	<p>Article 3 of PPP Law and Section 2 of Title 2 of Decree 1082/2015. Article 2.2.2.1.2.1 of Decree 1082 of 2015 establishes that performance is assessed against the service level agreements and quality standards set forth in the Concession Agreement.</p>
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	<p>Yes</p>
<b>Relevant legal/regulatory provisions (if any)</b>	<p>Article 2.2.2.1.2.5 of Decree 1082/2015 states that quality standards and levels of service will be expressly established in the contract. In those situations, in which those levels could not be reached by the private, the procuring authority can abate payments.</p>
<b>The private partner must provide the procuring or contract management authority with periodic operational and financial data</b>	<p>Yes</p>

<b>Relevant legal/regulatory provisions (if any)</b>	According to Article 2.2.2.1.2.6 of Decree 1082/2015, the contract will establish the contractor's obligation to provide, design, and operate a management control system to monitor the infrastructure availability, quality standards, a service level.
<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	According to Article 24 of PPP Law, the public resources and all other funds of the project shall be administered through a trust. The procuring authority will have the power to require any information as it deems necessary, which shall be delivered directly to the procuring entity by the trust, in the terms and conditions established in the contract.
<b>The PPP contract performance information must be available to the public</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>43.2. Is PPP contract performance information made publicly available online?</b>	No
<b>If yes, please specify the website:</b>	n/a
<b>44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes</b>	Yes



<b>in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>Public Procurement contracts are intuito personae, therefore, once celebrated, they cannot be ceded without prior authorization of the Procuring entity - Article 41 of Law 80 of 1993. Likewise, Article 9 of the same law indicates that if an inability or incompatibility shall occur to the contractor, he will yield the contract with prior authorization of the contracting entity, or if this is not possible, the contractor will renounce to the execution of the contract.</p>
<b>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).</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>n/a</p>
<b>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>According to Article 41 of Law 80 of 1993, Public Procurement contracts are intuito personae, therefore, once celebrated, they cannot be ceded without prior authorization of the Procuring entity. This article means that a contractor is chosen in consideration to objective conditions: experience, organization, equipment, terms, technical expertise, price. Hence, it is an obligation of the procuring entity to ensure that those conditions are maintained throughout the life of the contract.</p>
<b>In other cases, flexibility to change the</b>	<p>Yes</p>

<b>ownership structure and/or assign the contract.</b>	
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>Article 41 of Law 80 of 1993</p>
<b>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>According to article 7 of the PPP Law no changes in the scope or duration are allowed during the first three years since the awarding, neither after 3/4 of the duration of the PPP contract. Moreover, according to article 13 and 18 of the PPP Law changes in the scope or the duration of the contract cannot imply increasing the original value of the PPP contract by more than 20 %. Likewise, Articles 18 and 21 of PPP Law indicates the process to follow in case of additions or prorogations of the PPP contracts derivate from unsolicited proposal that require and do not require public resources disbursement, respectively. Likewise, Article 2.2.2.1.4.3. of Decree 1082/2015 regulates this matter.</p>
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>According to article 26 of PPP Law, if there is to be any change in the payment commitments, these have to be approved by the Council for Fiscal Policy (Consejo de Política Fiscal - CONFIS,)</p>
<b>46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or</b>	<p>Yes</p>

<b>object of the contract.</b>	
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	According to article 7 of the PPP Law no changes in the scope or duration are allowed during the first three years since the awarding, neither after 3/4 of the duration of the PPP contract. Moreover, according to article 13 and 18 of the PPP Law changes in the scope or the duration of the contract cannot imply increasing the original value of the PPP contract by more than 20 %. On the other hand, Article 5 and 27 of Law 80 of 1993 establishes that contractors shall have the right, upon request, that the public entity restores the balance of the economic equation of the contract to a point of no loss by the occurrence of unforeseen situations that are not attributable to the contractors. If this balance is broken by default of the contracting public entity, the equation has to be reestablished to that that arisen at the moment of the creation of the celebration of the contract.
<b>A change in the risk allocation of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	n/a
<b>A change in the financial and/or economic balance of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	n/a
<b>A change in the duration of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	According to article 7 of the PPP Law no changes in the scope or duration are allowed during the first three years since the awarding, neither after 3/4 of the duration of the PPP contract. Moreover, according to article 13 and 18 of the PPP Law changes in the scope or the duration of the contract cannot imply increasing the original value of the PPP contract by more than 20 %.
<b>A change in the agreed price or tariff.</b>	No
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	n/a
<b>46.3. Can the procuring</b>	Yes

<b>authority unilaterally modify a PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>Article 16 of Law 80/1993 sets forth that the procuring authority is allowed to modify the contract unilaterally only to avoid the stoppage of the contract or a severe breach of the contract. The unilateral modification should be done by a well-justified administrative act.</p>
<b>47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>Commerce Code, case law establishes the right to economic rebalance due to force majeure (hardship)</p>
<b>Material Adverse government action .</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>Commerce Code, case law establishes right to economic rebalance due to material adverse government action</p>
<b>Change in the Law.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>n/a</p>
<b>Refinancing.</b>	<p>No</p>

<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	n/a
<b>Subcontracting and replacement of the subcontractors.</b>	No
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	n/a
<b>48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	According to Article 68 of Law 80 of 1993, the parties to this type of contracts will seek to address disputes by means of “amigables componedores”, mediation or transaction agreements. Article 70 of the same law, allows the use of arbitration clauses as well. For these reasons, many PPP agreements have both mechanisms: “amigable componedor” and arbitration clauses.
<b>48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body</b>	No
<b>If yes, please specify:</b>	n/a
<b>Local courts</b>	Yes

<b>Domestic arbitration</b>	Yes
<b>International arbitration</b>	Yes
<b>Investor-State Dispute Settlement (ISDS)</b>	Yes
<b>Mediation</b>	Yes
<b>Please provide the relevant legal/regulatory/standard contractual provisions (if any)</b>	According to Article 68 of Law 80 of 1993, the parties to this type of contracts will seek to address disputes by means of “amigables componedores”, mediation or transaction agreements. Article 70 of the same law, allows the use of arbitration clauses as well. For these reasons, many PPP agreements have both mechanisms: “amigable componedor” and arbitration clauses.
<b>48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	Law 1563 of 2012, Colombian Arbitration Law.
<b>International arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	Law 1563 of 2012, Colombian Arbitration Law.
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	For ISDS, not specific for PPP regulation, but Colombia is a signatory country of bilateral investment treaties and is a member of ICSID (International Centre for Settlement of Investment Disputes).
<b>49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in</b>	Yes

<b>financial difficulty prior to insolvency?</b>	
<b>If yes, please specify and provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>No regulatory basis</p>
<b>50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b>	<p>PPP Law in its Article 30 says: "In case of default of the contractor, lenders may continue the execution of the contract until its termination directly or through third parties"</p>
<b>50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.</b>	<p>Yes</p>
<b>If yes, please specify and provide the</b>	<p>PPP Law in its Article 30 says: "In case of default of the contractor, lenders may continue the execution of the contract until its termination directly or through third parties"</p>

relevant legal/regulatory/s tandard contractual provisions (if any):	
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/s tandard 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/s tandard contractual provisions (if any):	n/a
Other.	No
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/s tandard contractual provisions (if any):	Articles 17 and 18 of Law 80 of 1993 establishes the situations where the public entities can terminate the contract : 1 - Unilateral Termination Causes: The public entity could terminate the contract in the following events: a) When the demands of public service required or the public order situation dictates; b) Death or permanent physical disability of the contractor, if a he is natural person, or dissolution of the contractors legal entity; c) By judicial interdiction or bankruptcy of the contractor; d) By payment default, bankruptcy or judicial liens of the contractor that seriously affect the performance of the contract. 2 - Revocation: this is that the provision under which if the contractor breaches any of his obligations, affecting in a grave and



	<p>direct manner the execution of the contract, that may lead to its withdrawal, the entity by administrative act properly motivated will be able to terminate the contract and order its liquidation in the state it is in. Also Article 32 PPP law (see next)</p>
<p><b>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?</b></p>	<p>Yes</p>
<p><b>If yes, please specify and provide the relevant legal/regulatory/s tandard contractual provisions (if any):</b></p>	<p>Article 32 of PPP Law: Early Termination Agreement. In PPP contracts, a clause will be included in which the mathematical formula is established to determine any reciprocal benefits between the parties, as to the PPP contracts' either early termination, by mutual agreement or unilaterally .</p>
<p><b>Unsolicited Proposals</b></p>	
<p><b>34. Are unsolicited proposals in Colombia: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)</b></p>	<p>No</p>
<p><b>Explicitly allowed by the legal framework?</b></p>	<p>Yes</p>
<p><b>Not regulated by the legal framework, but do happen in practice?</b></p>	<p>No</p>
<p><b>Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)</b></p>	<p>No</p>
<p><b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant</b></p>	<p>Title III of the PPP Law allow and regulates Unsolicited PPP Projects</p>

<b>legal/regulatory provisions</b>	
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b>	Title III of PPP Law indicates aspects of the process with unsolicited proposals such as: how unsolicited proposal projects shall be structured; the previous assessment of the unsolicited proposal; and evaluation, acceptance or rejection of the unsolicited proposal. These aspects are regulated by the Articles 2.2.2.1.5.1 to 2.2.2.1.5.12 of Decree 1082/2015.
<b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 15 of the PPP Law sets forth that the public entity has three months to review the prefeasibility study submitted by the interested party and decide whether or not the unsolicited proposal can continue to feasibility phase or not. Article 2.2.2.1.5.2. of the Decree 1082 of 2015 sets forth the minimum information that the interested party has to submit for the pre-feasibility analysis.
<b>36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.</b>	No
<b>If yes, please specify and provide the</b>	n/a

<b>relevant legal/regulatory provisions (if any):</b>	
<b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 15 and 16 of Law 1508 of 2012 establishes the pre-feasibility and feasibility assessments required to accept or reject an unsolicited proposal. Article 2.2.2.1.5.5. of Decree 1082 of 2015. Resolutions 1464 of 2016 of the National Planning Department</p>
<b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b>	<p>No</p>
<b>Please elaborate and provide examples:</b>	<p>n/a</p>
<b>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Articles 16, 17, 19 and 20 of PPP Law and articles 2.2.2.1.5.9. and 2.2.2.1.5.12. of Decree 1082/2015 establish that if a third party manifests its interest in executing a project that does not require public funds disbursement, in the conditions established between the procuring entity and the initial unsolicited party, the competent public entity shall open a public procurement selection process called “selection abreviada de menor cuantia” -minor quantity abbreviated selection process-. If there is not a third party, the contract will be awarded directly without a competitive procedure. When it comes to an unsolicited proposal that requires disbursement of public resources, the procuring entity shall open a public bidding process.</p>
<b>38. Does the procuring authority grant a minimum period of time to additional prospective</b>	<p>Yes</p>

<b>bidders (besides the proponent) to prepare their proposals?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 17 and 19 of PPP Law and Articles 2.2.2.1.5.9. and 2.2.2.1.5.11 of Decree 1082/2015.
<b>and the time in calendar days:</b>	180
<b>39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.</b>	No
<b>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</b>	Yes
<b>39.3 Bid Bonus.</b>	Yes
<b>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</b>	Yes
<b>39.5 Other.</b>	No
<b>Please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	Article 2.2.2.1.5.10 establishes the reward for unsolicited proposals that require public resources disbursement, and Numeral 3 Article 2.2.2.1.5.12 of Decree 1082/2015 establishes the Swiss challenge for unsolicited proposals that don't require public resources disbursement, when third parties have manifested interest in the execution of a PPP.