

## PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN EL SALVADOR

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>	The PPP regulatory framework in El Salvador includes the Public-Private Partnerships Law, Decree 379 of 2013, Ley Especial de Asocios Público Privados (hereinafter, the “PPP Law”) and its Regulations, Decree 64 of 2015 (hereinafter the “PPP Regulation”). Article 104 of the PPP Law that provides that the PPP law will prevail over any other general or special law regulating the matter, notwithstanding the subsidiary applicability of other general and special laws relevant to the matter. In this sense, article 2 of the Law of Acquisitions and Contracting of the Public Administration, Decree 868 of 200 (hereinafter, “LACAP” 2000) includes under its general scope “PPPs, as a modality of participation of private investment; the participation and settlement of such associations in relation to the present law”. As a consequence, the provisions of LACAP will apply complementing those of the PPP Law and the PPP Regulations.
<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>	1) PPP Law: <a href="http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-especial-de-asocio-publico-privados">http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-especial-de-asocio-publico-privados</a> ; <a href="https://drive.google.com/file/d/0B48E7Nehox7PQUtnN21iVTVxVTg/view">https://drive.google.com/file/d/0B48E7Nehox7PQUtnN21iVTVxVTg/view</a> 2) PPP Regulations: <a href="https://drive.google.com/file/d/0B48E7Nehox7POVU3NFVodzFyNGc/view">https://drive.google.com/file/d/0B48E7Nehox7POVU3NFVodzFyNGc/view</a> 3) LACAP: <a href="https://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-adquisiciones-y-contrataciones-de-la-administracion-publica">https://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-adquisiciones-y-contrataciones-de-la-administracion-publica</a>
<b>2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</b>	No
<b>Please describe:</b>	n/a
<b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b>	Yes
<b>Please describe:</b>	A reform of the PPP Legislation is in discussion during 2017, aiming to extend PPP projects to other sectors (such as health water supply, and others), to reduce the procedures for development of PPP projects, among others.
<b>3.1 Besides national defense and other matters</b>	No

<p><b>of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</b></p>	
<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>	Yes
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	Article 3 of PPP Law: (the PPP Law) “excludes projects in the fields of health, social security, including the Salvadoran Social Security Institute (ISSS, for its Spanish initials), public security, justice with regards to custody, rehabilitation, and prison work of interns, water, education, including the University of El Salvador”
<p><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>	No
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	n/a
<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>	No
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	n/a
<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 relevant legal/regulatory provisions:</b></p>	Article 3 of PPP Law: (the PPP Law) “excludes projects in the fields of health, social security, including the Salvadoran Social Security Institute (ISSS, for its Spanish initials), public security, justice with regards to custody, rehabilitation,

	and prison work of interns, water, education, including the University of El Salvador”
<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>	No
<b>If yes, please specify and provide the relevant legal/regulatory provision (if any):</b>	n/a
<b>5. Please identify the PPP procuring authorities in El Salvador and provide their website(s) (if available):</b>	Any entity of the Executive Branch and local government entities (as municipalities) Article 2 of PPP Law states PPP can be carried out by “institutions with autonomy and municipalities”
<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>	Exports and Investment Promotion Agency of El Salvador (Organismo Promotor de Exportaciones e Inversiones de El Salvador PROESA) ( <a href="http://www.proesa.gob.sv">www.proesa.gob.sv</a> ) and in particular its PPP Directorate (Dirección de Asocios Publico Privados - <a href="http://dapp.gob.sv/">http://dapp.gob.sv/</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 national and international forums.</b>	Yes
<b>6.4 Technical support in implementing PPP projects.</b>	Yes
<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	Yes
<b>6.6 Revision of fiscal risks born by the Government.</b>	No
<b>6.7 Consultation with affected communities on potential impact of PPP projects.</b>	No
<b>6.8 Approval of PPP projects.</b>	Yes

<b>6.9 Undertaking the procurement of PPPs.</b>	No
<b>6.10 Oversight of PPP implementation.</b>	No
<b>6.11 Other</b>	Yes
<b>6.11 please specify:</b>	Termination or extension of the contract requires approval from PPP-Unit.
<b>Please provide the relevant legal/regulatory provisions:</b>	<p>Article 14 of PPP Law: “PROESA board of directors shall have the following functions, in all matters that pertain to this law: a) propose public private partnership policies to the president of the republic; b) approve public private partnership projects, their tender guidelines, and draft contracts, as well as contractual modifications in the terms set forth in this law, in the events in which it is applicable; c) with the competent authorities, prepare and coordinate all plans, policies, and standards for the undertaking and good performance of public private partnership contracts in all its various forms; d) ensure the proper development of public private partnership policies; e) define the appropriateness or inappropriateness of holding another tender process, once the validity of the contract has come to an end or if the contract has been terminated due to any other cause, upon the proposal of the state contracting institution; f) to report annually to the president of the republic and the legislative assembly on its administrative, financial, and technical management, as well as on the transparency mechanisms and actions implemented in public private partnership contracts signed; and, g) conduct all other powers and comply with all other functions or attributions that this law or the regulation assign thereto”</p> <p>Article 15 of PPP Law: (other functions of PROESA are:  “a) advise procuring authorities of the government regarding PPPs, b) identify opportunities and promote mechanisms of PPPs, c) promote mechanisms of PPPs and portfolios of projects to investors and financial institutions and public in general (...)</p> <p>Article 69 of PPP Law states that the procuring authorities need the approval of PROESA to terminate or extend the contract.</p>
<b>PPP Preparation</b>	
<b>8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 19 of PPP Law:  “The ministry of finance, by itself or through its agencies, and without detriment to the powers conferred thereto by other laws, shall have the following functions with regards to this law: (...) D) issue a favorable or unfavorable financial ruling on the fiscal implications of the tender guidelines and the contract, as well as any amendments thereto in accordance with article 63 of this law; (...) G) for every project from the budget law, to verify that the contracting state institutions include the corresponding allocation of the necessary resources to meet the commitments arising from public private partnership contracts;”</p> <p>Article 32 of PPP Law states that regarding :“(...) activities previous to the</p>

	tendering process (...) "Feasibility study" (of PPP project) the approval from the Ministry of Finance is mandatory.
<b>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 19 of PPP Law:  "Functions of the Ministry of Finance: (...) d) Provide financial onion in favor or against the fiscal impact of tendering documents and contract and their modifications (...) f) verify the consistency of commitments to quantifiable future payments, both firm and contingent, generated by each PPP project related to the executive organism, g) verify that the procuring authorities of the government include in each budget the required resources to afford the quantifiable commitments, both firm and contingent, h) verify that procuring authorities register of quantifiable commitments, both firm and contingent, (...)"</p> <p>Article 20 of PPP Law:  "The firm commitments that exceed the fiscal year should be treated as public debt only for fiscal accountability purposes. The Ministry of Finance should develop accounting rules to value and register the commitments, both firm and contingent. Also, it should update and control those commitments. The board of directors of PROESA will verify that at least each three years there is an independent evaluation of the expected amount of those commitments."</p> <p>Articles 53 and 54 of the PPP Law further regulate the attributions of the Assembly to grant the government authorization to enter into multiyear commitments.</p>
<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>	<p>Article 19 of PPP Law:  "Functions of the Ministry of Finance: (...) d) Provide financial onion in favor or against the fiscal impact of tendering documents and contract and their modifications (...) f) verify the consistency of commitments to quantifiable future payments, both firm and contingent, generated by each PPP project related to the executive organism, g) verify that the procuring authorities of the government include in each budget the required resources to afford the quantifiable commitments, both firm and contingent, h) verify that procuring authorities register of quantifiable commitments, both firm and contingent, (...)"</p> <p>Article 20 of PPP Law:  "The firm commitments that exceed the fiscal year should be treated as public</p>

	debt only for fiscal accountability purposes. The Ministry of Finance should develop accounting rules to value and register the commitments, both firm and contingent. Also, it should update and control those commitments. The board of directors of PROESA will verify that at least each three years there is an independent evaluation of the expected amount of those commitments.”
<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>	<p>Article 19 of PPP Law:  “Functions of the Ministry of Finance: (...) d) Provide financial opinion in favor or against the fiscal impact of tendering documents and contract and their modifications (...) f) verify the consistency of commitments to quantifiable future payments, both firm and contingent, generated by each PPP project related to the executive organism, g) verify that the procuring authorities of the government include in each budget the required resources to afford the quantifiable commitments, both firm and contingent, h) verify that procuring authorities register of quantifiable commitments, both firm and contingent, (...)”</p> <p>Article 20 of PPP Law:  “The firm commitments that exceed the fiscal year should be treated as public debt only for fiscal accountability purposes. The Ministry of Finance should develop accounting rules to value and register the commitments, both firm and contingent. Also, it should update and control those commitments. The board of directors of PROESA will verify that at least each three years there is an independent evaluation of the expected amount of those commitments.”</p>
<b>8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).</b>	No
<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>	<p>Government accounting rules are based on generally-accepted principles, although the reports are not based on International Public Sector Accounting Standards (IPSAS).</p> <p><a href="http://www.transparenciafiscal.gob.sv/downloads/pdf/DC4202_Informe_ROSC_-_FMI_2011.p">http://www.transparenciafiscal.gob.sv/downloads/pdf/DC4202_Informe_ROSC_-_FMI_2011.p</a>. Some of our contributors refer to the World Bank’s guidelines for fiscal and contingent liabilities assessment (PFRAM)</p>
<b>9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does</b>	Yes

<p>any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?</p>	
<p>If yes, please specify the relevant authority</p>	<p>PROESA (as the PPP Unit) and Congress</p>
<p>and provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 32 of PPP Law states that:“(…) activities previous to the tendering process (… “Feasibility study” (of PPP project) the approval from the PPP-Unit is mandatory.</p> <p>Article 53 of PPP Law: “the legislative assembly will be responsible for empowering the executive branch to hold tender processes for public private partnership projects involving firm and contingent commitments for future fiscal years, which must be approved with, at a minimum, the favorable vote of one half plus one of all elected representatives, projects which will contain the work or service to be performed and the location, the timeframe for the project, the maximum amount of the project, and the financial and social justification for the public private partnership. the contracts that this provision refers to, including the firm award resolution, shall be brought to the attention of the legislative assembly, which will be approved with the favorable vote of one half plus one of the elected representatives.”</p>
<p>9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Approval from the PPP-Unit</p> <p>Article 14 of PPP Law: “the board of directors of PROESA will have the following functions: (… ) approve the PPP projects, their tendering documents, and the contracts drafts and contract modifications (… )</p> <p>Approval from the Congress:</p> <p>Article 53 of PPP Law: “(…) (regarding) projects that produce fiscal commitments (… ) the contracts that this provision refers to, including the firm award resolution, shall be brought to the attention of the legislative assembly, which will be approved with the favorable vote of one half plus one of the elected representatives.”</p> <p>Article 54 of PPP Law: “(… ) (regarding concessions over goods of public use) produce fiscal commitments) (… ) in case de Assembly doesn’t approve the contract of concession, it will not produce any economic commitment to the government (… )”</p>

<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the 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>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other</b>	No



<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>	Yes
<b>Please elaborate and provide examples:</b>	While article 32 of the PPP Act requires to conduct a set of assessments, there is neither a specific provision requiring or establishing a procedure to verify consistency with public investment priorities in the regulatory framework.
<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>	No Data
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	No PPP has been implemented under the PPP Law
<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 32 of PPP Law states that to start the procurement of a PPP project, the procuring authority must present a feasibility study, containing, among other elements, a study of its economic feasibility. This study has to show the project generates social economic value and value for money: “Economic feasibility of the project: must show that the project generates social economic value, and determine through an analysis of value for money, that the PPP form constitutes the most efficient and effective way to achieve the end goals. In particular, it should justify the convenience to use the private PPP mechanism as an alternative to public traditional investment forms. The study shall classify the project per economic, as self-sustainable or co-financed, compliant with this law”
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Section 4 of “Methodology for Evaluation of PPP projects” detailing the cost benefit analysis methodology ( <a href="https://drive.google.com/file/d/OB48E7Nehox7Pbm5RTFpVUml6MUk/view">https://drive.google.com/file/d/OB48E7Nehox7Pbm5RTFpVUml6MUk/view</a> ).
<b>Is the assessment done in practice?</b>	No Data

<b>Details:</b>	No PPP has been implemented under the PPP Law
<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 18 of the PPP Law: "Functions of the Ministry of Finance: "a) evaluate the risk allocation and fiscal impacts of the PPP projects". Article 32 of the PPP Law: "Fiscal Impact Assessment: should include the estimation of the budgetary and financial impact during the fiscal years in which the purpose of the PPP is intended to be executed, the financial plans that will be carried out to meet the budgetary implications concerning the implementation of these contracts with their own budgetary assignments ; in the same way, it should incorporate the obligations to be contracted by the State in connection with the execution of the reference, in accordance with the regulations of the law",
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	No PPP has been implemented under the PPP Law so far
<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Risk assessment is included as part of the value for money analysis required by Article 32.a) of PPP Law as described in the Methodology for Evaluation of PPP projects
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Section 7 of the "Methodology for Evaluation of PPP projects" that details the evaluation and assessment of project risks ( <a href="https://drive.google.com/file/d/0B48E7Nehox7Pbm5RTFpVUml6MUk/view">https://drive.google.com/file/d/0B48E7Nehox7Pbm5RTFpVUml6MUk/view</a> ).
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	No PPP projects have been implemented under the current PPP law
<b>12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)</b>	Yes

<b>Relevant legal/regulatory provision (if any)</b>	Article 32 of PPP Law states that to start the procurement of a PPP project, the procuring authority must present a feasibility study, containing, among other elements, a study of feasibility. This study has to show that the project generates social economic value and value for money.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Section 6 of “Methodology for Evaluation of PPP projects” details the value for money analysis ( <a href="https://drive.google.com/file/d/0B48E7Nehox7Pbm5RTFpVUml6MUk/view">https://drive.google.com/file/d/0B48E7Nehox7Pbm5RTFpVUml6MUk/view</a> ).
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	No PPP has been implemented under the PPP Law
<b>12.5. Financial viability or bankability assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Financial viability is included as part of the value for money analysis required by Article 32.a) of PPP Law as described in the Methodology for Evaluation of PPP projects
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Section 7.2.2. of “Methodology for Evaluation of PPP projects” refers to the financial modeling to be included as part of the value for money assessment ( <a href="https://drive.google.com/file/d/0B48E7Nehox7Pbm5RTFpVUml6MUk/view">https://drive.google.com/file/d/0B48E7Nehox7Pbm5RTFpVUml6MUk/view</a> ).
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	No PPP projects developed under the PPP Law
<b>12.6. Market sounding and/or assessment (showing evidence of investors’ interest in the market for the project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	No PPP projects developed so far under the PPP law
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 32 of PPP Law state that to start the procurement of a PPP project, the procuring authority must present a feasibility study must contain, in case legislation requires it, a environmental risk analysis and mitigation measures.
<b>Is there a specific methodology for the assessment?</b>	Yes

<b>If yes, please elaborate</b>	Law of Environment (Decree 233/1998) applies to projects or works that have environmental impact (Article 18) and provides guidelines for studies and evaluation of environmental impact.
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	No PPP projects have been developed under the PPP Law
<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>	According to article 32.c) requires a social impact evaluation, an analysis of social losses and their respective measures of mitigation. This is further developed in the "Methodology for Evaluation of PPP projects" and as part of the environmental assessment
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Article 25 of the Environmental Law includes a provision with rules for public consultation.
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	No PPP projects have been developed under the PPP Law
<b>13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b>	n/a
<b>13.1. Are the assessments published online?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 105 of PPP Law: "the PPP-Unit will create the public registry of public private partnership projects, in which all projects performed under the contractual modalities set forth in this law shall be registered. the registry shall be public in nature and proesa must ensure expedited and permanent access to its information via electronic means through its institutional website, in line with the provisions of the access to public information law. All public private partnership projects and their documentation shall be registered in this registry, including, inter alia, the tendering documents, prefeasibility studies, feasibility studies, cost-benefit analysis, resolutions of the award, contracts and their modifications, special pledges set forth under this law, rejected projects,

	approved projects, implemented projects, prequalified bidders for each tender process and those prequalified for expert consultancies and advisory, arbitrators, and suppliers.”
<b>specify the website</b>	<a href="http://www.proesa.gob.sv/inversiones/centro-de-documentacion#">http://www.proesa.gob.sv/inversiones/centro-de-documentacion#</a>
<b>please specify which of the assessments are published online:</b>	Prefeasibility studies, feasibility studies, cost-benefit analysis.
<b>14. Does the procuring authority include a draft PPP contract in the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 41 of PPP Law states: “minimum content of tendering documents: (...) j) draft of the contract”
<b>If no, please elaborate</b>	n/a
<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 105.A of PPP Law: “the PPP-Unit will create the public registry of public private partnership projects, in which all projects performed under the contractual modalities set forth in this law shall be registered. the registry shall be public in nature and presa must ensure expedited and permanent access to its information via electronic means through its institutional website, in line with the provisions of the access to public information law. All public private partnership projects and their documentation shall be registered in this registry, including, inter alia, the tendering documents, (...)”
<b>and please specify the website:</b>	<a href="http://www.proesa.gob.sv">http://www.proesa.gob.sv</a>
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	No
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	n/a
<b>16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)</b>	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>	Article 31 of PPP Law: “the private partner will have the following obligations (...) i) obtain municipal permits u others required for the execution of the project”
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</b>	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>	Article 31 of PPP Law: “the private partner will have the following obligations (...) i) obtain municipal permits u others required for the execution of the project”
<b>16.4. Obtaining the required land: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis

<b>16.5. Obtaining the required right of way: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 42 of PPP Law: “Committee of evaluation. The technical and economic bids will be evaluated by a committee composed by one member from PROESA, one from the Ministry of Finance, and two from the procuring authority. The members must have specialized knowledge over the subject of the contract and within their field of work. (...) Persons with the following characteristics cannot be members: penal antecedents, conflict of interest with bidders or any private participant, be in some legal process associated to PPP projects or associated to a firm that has legal process associated to PPP projects, family relatives of some of the bidders, partners of bidders (...)”
<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The bid evaluation committee members are not required to have any specific qualifications.</b>	No
<b>Please elaborate and provide examples:</b>	n/a

<b>19. Does the procuring authority issue a public procurement notice of the PPP project?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Article 36 of PPP Regulation: “Depending on the complexity, the nature and magnitude of the project, the form in which said invitation is made will be established in the tender guidelines. Notwithstanding the foregoing, it might be made following the procedure established in the present article. The invitation for tender will include, as a minimum, the area or objective of the public- private partnership, the period and place to obtain the tender guidelines and, the date, time and place for delivery of technical and economic offers. The invitation for tender might be made through the contracting State institution’s and PROESA’s webpages set up for that, and at least in one of mass media national newspapers; besides, publishing it in the following media must be considered: a) Specialized technical publications, recognized internationally; and, b) Newspapers with broad international circulation.”
<b>19.1. If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.proesa.gob.sv">www.proesa.gob.sv</a>
<b>20. Are foreign companies prohibited from participating in the bidding process?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The Article 36 of PPP Law establishes that the conditions for the tendering process will be in function of the complexity, nature and size of the project. The specific time is set in the tendering documents in a case-by-case basis. Additionally, article 44.k of LACAP establishes a minimum period of 10 business days.
<b>and the time in calendar days:</b>	14
<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>	No



<b>Default</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 39 of PPP Law: “the tendering processes, without exception, will be public and international, and any person, national and foreign, can participate as long as he/she complies to the tendering conditions” Additionally, the Article 38 of PPP Law sets the competition authority has to provide its opinion (no binding) to the PPP-Unit over if the tendering documents (and condition) limit or impede significantly the competition.
<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 35 of PPP Law: “the tendering process can have an initial stage of pre-qualification (...)”
<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>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 36 of PPP Law: “Competitive dialogue. (...) the procuring authority can use a process of competitive dialogue to those bidders that have participated in the pre-qualification stage and comply with the requirements of technical and economical solvency established in the tendering documents”
<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>	n/a
<b>Default</b>	n/a
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.8. Do the tender documents detail the procedure of the</b>	Yes

<b>procurement process providing the same information to all the bidders?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 8 of PPP Law: “Competition: tender processes must be transparent and competitive, in order to promote the participation of the largest amount of economic agents, respecting the principles of non-discrimination, equality, and widespread dissemination, and thus enable selecting the private participant who can offer the work, service, or activity of general interest in the most efficient and effective manner; “</p> <p>Article 41 of PPP Law: “(Minimum content of tendering documents) (...) the tendering documents must include: “b) conditions to present offers, explanation of technical and economic offers, legal and financial requirements, and history of the firm(...)”</p>
<b>If no, please elaborate:</b>	n/a
<b>22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 35 of PPP Law: “(for the stage of prequalification) a tendering documents shall be made and will contain the requirements for prequalification. During this stage it is mandatory the non-discriminatory treatment of all participants”</p>
<b>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</b>	No Data
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate:</b>	No PPPs have been developed in practice yet
<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>	<p>Article 35 of PPP Law: “the tendering documents will allow the (prequalified) participants to make proposals, to improve or adjust the tendering conditions or the contract (...) during the procedure (...) (the participants) can make consultations and require clarifications”</p> <p>Additionally, Article 40 of Decree 69: “the participants can make consultations and require clarifications of the tendering documents (...)”</p>
<b>23.1. If yes, notwithstanding</b>	Yes

<b>confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 40 of Decree 69: “(regarding consultations and clarifications of tendering documents) the answers will be included in informational notes and will be sent to all participants”
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	No Data
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	No PPP projects implemented yet under the PPP Law
<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>	No regulatory basis
<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>	No regulatory basis
<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	No Data
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	No PPP projects implemented yet under the PPP Law
<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

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>If no, please elaborate:</b>	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
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 43 of PPP Law: “to award a contract objective and quantifiable factors shall be used (...) the definition and the form of application will be established in the tendering documents. (...)”
<b>Evaluation criteria is not set in the tender documents</b>	No
<b>27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one): The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.</b>	No
<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>	Article 44 of PPP Law: The evaluation committee shall determine the bidders whose technical proposals meet the conditions set out in the tender guidelines. Should there be no technical proposal that meets those conditions, the committee shall recommend that the tender be declared void. If there is one or more valid technical proposals, the committee shall assess the financial proposals from the respective bidders.
<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>	Article 105.A of PPP Law: "PROESA (the PPP-Unit) will create the public registry of public private partnership projects, in which all projects performed under the contractual modalities set forth in this law shall be registered. the registry shall be public in nature and presa must ensure expedited and permanent access to its information via electronic means through its institutional website, in line with the provisions of the access to public information law. All public private partnership projects and their documentation shall be registered in this registry, including, inter alia, the tendering documents, prefeasibility studies, feasibility studies, cost-benefit analysis, resolutions of the award, contracts and their modifications, special pledges set forth under this law, rejected projects, approved projects, implemented projects, prequalified bidders for each tender process and those prequalified for expert consultancies and advisory, arbitrators, and suppliers."
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.proesa.gob.sv">www.proesa.gob.sv</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>	Article 57 of the LACAP provides that the procuring authorities will notify the bidders of the results of the award procedure.
<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>	No regulatory basis
<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>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 44 of PPP Law: “(the award resolution) will take effect in five days (...) in that period (participants) can present revision requests”</p> <p>Article 45 of PPP Law: “(the participants) can present a revision request to the procuring authority (...) the request shall be resolved in maximum three days (...)”</p>
<b>and the time in calendar days:</b>	5
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	No
<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>	Article 56 of the PPP Law states that the contract cannot modify the conditions established in the tendering documents.
<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	No Data
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	No PPP has been implemented under the new PPP Law
<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>	Article 105.A of PPP Law: “the PPP-Unit will create the public registry of public private partnership projects, in which all projects performed under the contractual modalities set forth in this law shall be registered. the registry shall be public in nature and presa must ensure expedited and permanent access to its information via electronic means through its institutional website, in line with the provisions of the access to public information law. All public private partnership projects and their documentation shall be registered in this registry, including, inter alia, the tendering documents, prefeasibility studies, feasibility studies, cost-benefit analysis, resolutions of the award, contracts and their modifications, special pledges set forth under this law, rejected projects, approved projects, implemented projects, prequalified bidders for each tender process and those prequalified for expert consultancies and advisory, arbitrators, and suppliers.”
<b>32.1. If yes, which of the following options best</b>	Yes

<b>describes this publication (choose only one)?:</b> <b>Publication of the full PPP contract including all its annexes and appendixes</b>	
<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.proesa.gob.sv">www.proesa.gob.sv</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 105.A of PPP Law: “the PPP-Unit will create the public registry of public private partnership projects, in which all projects performed under the contractual modalities set forth in this law shall be registered. the registry shall be public in nature and presa must ensure expedited and permanent access to its information via electronic means through its institutional website, in line with the provisions of the access to public information law. All public private partnership projects and their documentation shall be registered in this registry, including, inter alia, the tendering documents, prefeasibility studies, feasibility studies, cost-benefit analysis, resolutions of the award, contracts and their modifications, special pledges set forth under this law, rejected projects, approved projects, implemented projects, prequalified bidders for each tender process and those prequalified for expert consultancies and advisory, arbitrators, and suppliers.”
<b>PPP Contract Management</b>	
<b>41. Has the procuring or contract management authority established a system to manage the implementation of the PPP</b>	Yes

<b>contract (e.g. attributing responsibilities or establishing specific management tools)?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The Article 21-29 of the PPP Law establishes the creation of a managing authority for the government and defines its functions and procedures. Additionally, article 60 provides for the appointment of a works supervisor during the works stage.
<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>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	The Article 21-29 of the PPP Law establishes the creation of a managing authority for the government and defines its functions and procedures.
<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	Article 28 of the PPP Law establishes the participation of the supervisory authority in the procurement process.
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	According to article 88 of the PPP Law, the procuring authority will approve the service manual prepared by the private partner. To grant such approval, it must have the approval of OFAPP (contract management authority), at least on the following matters: a) The description of the rights and obligations of the users; b) The service levels of the Public Private Partnership project; Y, c) Rules on user complaints. The service manual, once approved, should be published in the institutional portal of OFAPP (contract management authority)
<b>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</b>	No
<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>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	Article 10 of PPP Law establishes the obligation of the procuring authority to oversee the risk allocation of the contract (defined in the tendering documents)



	<p>and the contract).</p> <p>Additionally, the PPP-Unit provides guidelines for this topic and publish them in the following link:  (<a href="https://drive.google.com/file/d/0B48E7NehoX7Pbm5RTFpVUml6MUk/view">https://drive.google.com/file/d/0B48E7NehoX7Pbm5RTFpVUml6MUk/view</a>).</p> <p>Moreover, article 56.6 of the PPP Law states that  In order to guarantee the contracts entered into, the parties may agree to subject the PPP contract to insurance policies of multilateral organizations and institutions offering recognized investment guarantees.</p>
<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>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	The Article 24 of the PPP Law establishes specific criteria for the members of the managing team. In particular, literal b) requires: ten years of relevant professional experience and be of recognized prestige in the disciplines related to Public Private Partnerships contracts, such as economics, legal sciences, business administration, public accounting, engineering and related professions;
<b>The PPP contract management team members are required to meet sufficient qualification without specific details.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<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

<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Article 60 of PPP Law:  “During the construction phase of the project, the contracting State institution will appoint a project supervisor whose function will be to ensure compliance with the obligations corresponding to that stage. The contract shall regulate the procedures so that the supervisor can conduct the inspection and issue the corresponding instructions during the construction phase. The project supervisor must have credentials certifying their expertise in the project areas that they will be concerned with, and have recognized expertise in the field.  The updated log of the project must be available on the institutional website of the procuring authority. The tender guidelines shall regulate their requirements and use. “</p>
<p><b>42.1. If yes, is the PPP contract construction performance information made available to the public?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Article 8. h of PPP Law:  “Transparency, advertising, and social audit: the public private procurement procedure must include mechanisms to ensure advertisements for the actions and to enable the adequate performance of social audits, in order to ensure the protection and promotion of the rights of users and of the population at large. All actions relating to Public Private Partnership projects and actions involving fiscal commitments from the State and effects on users will be public and subject to strict accountability measures; “  Article 60 of the PPP Law: The updated log of the project must be available on the institutional website of the procuring authority. The tender guidelines shall regulate their requirements and use. “</p>
<p><b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b></p>	<p>Yes</p>
<p><b>If yes, please specify the website:</b></p>	<p>www.proesa.gob.sv and the procuring authority’s website</p>
<p><b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Article 76 of PPP Law establish the obligation of OFAPP, the contract managing authority, to and oversee the contract in the operation phase. In particular it should oversee service, tariffs, and right of users in the terms of the contract and tendering documents.</p>
<p><b>43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation</b></p>	<p>Yes</p>

<b>criteria set in the tender documents and the PPP contract</b>	
<b>Relevant legal/regulatory provisions (if any)</b>	Article 77 of PPP Law explicitly establishes the obligation to oversee the performance in accordance to the conditions of the tendering conditions and contract.
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The private partner must provide the procuring or contract management authority with periodic operational and financial data</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	Article 31 literal e of the PPP Law establishes the obligation of the private partner to send annually audited financial reports to the procuring authority.
<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>	In general, according to article 82 of the PPP Law the OFAPP (contract management authority) have the right to request any necessary information. Moreover, According to Article 89 of the PPP Law, the supervisory authority must elaborate studies about the performance of the projects in operation phase, with emphasis in quality and price of the services.
<b>The PPP contract performance information must be available to the public</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	According to Article 89 of the PPP Law, the supervisory authority must elaborate studies about the performance of the projects in operation phase, with emphasis in quality and price of the services. The studies shall be published in its website.
<b>43.2. Is PPP contract performance information made publicly available online?</b>	Yes
<b>If yes, please specify the website:</b>	www.proesa.gob.sv and also the webpage of OFAPP (the contract management authority) once is created
<b>44. Are foreign companies prohibited from repatriating the income</b>	No

<b>resulting from the operation of a PPP project?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Article 46 of PPP Law:          “The bidder who has been awarded the contract, shall be forced to create a joint-stock company, of Salvadoran nationality, whose purpose is to carry out all activities related to the Public Private Partnership contract. The capital of this company shall at all times be composed of registered shares and shall meet all other requirements set out under company law, this Law, its Regulation and the tender guidelines. No public institution may, either directly or indirectly, be a shareholder this company.          The incorporation of the company shall be conducted with the same partners, shareholders, or members of the consortium and with the same shares they held on the date of award of the tender. In the case of individual bidders, minority shareholders shall be chosen at the discretion of the former, but under no circumstance may they be other bidders who participated in the tender process, nor exceed the percentage of shares set out by the tender guidelines. The tender guidelines shall set out the timeframes and conditions under which the shareholding structure of the special purpose vehicle may be modified.          Art. 56 PPP Law: Without detriment to the provisions agreed upon according to the nature of each contract, the following rules shall apply to Public Private Partnership contracts:          a) The contracts must contain the requirements and conditions under which the issuance, transfer, and assignment of shares of the special purpose vehicle may be authorized by the contracting state institution at any stage of the contract;          b) Contracts shall provide for the possibility to assign them during the operational phase, and must contain explicit conditions to be met by the assignee company during that period; “</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>	Yes
<b>If yes, please provide the relevant</b>	Art. 56 PPP Law: Without detriment to the provisions agreed upon according to the nature of each contract, the following rules shall apply to Public Private

<p><b>legal/regulatory/standard contractual provisions (if any):</b></p>	<p>Partnership contracts:  a) The contracts must contain the requirements and conditions under which the issuance, transfer, and assignment of shares of the special purpose vehicle may be authorized by the contracting state institution at any stage of the contract;  b) Contracts shall provide for the possibility to assign them during the operational phase, and must contain explicit conditions to be met by the assignee company during that period; “</p>
<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>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b></p>	<p>Article 30 (d) of the PPP Law: The private participant shall possess the following rights, without detriment to others set forth under this Law and its regulations, the tender guidelines, and the contract:  d) To fully assign or transfer the contract once it is in the operational phase. This assignment or transfer can only be made to those who fulfill the requirements established in the tender guidelines, and subsequent to the approval of the contracting State institution and of the OFAPP, who shall have a maximum period of one hundred and twenty days to authorize or deny the assignment or transfer. Should neither institution make a statement during this period, the assignment or transfer shall be deemed to have been approved</p>
<p><b>In other cases, flexibility to change the ownership structure and/or assign the contract.</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b></p>	<p>Article 30 literal d of PPP Law:  “The private participant shall possess the following rights, without detriment to others set forth under this Law and its regulations, the tender guidelines, and the contract: (...)”  d) To fully assign or transfer the contract once it is in the operational phase. This assignment or transfer can only be made to those who fulfill the requirements established in the tender guidelines, and subsequent to the approval of the contracting State institution and of the OFAPP, who shall have a maximum period of one hundred and twenty days to authorize or deny the assignment or transfer. Should neither institution make a statement during this period, the assignment or transfer shall be deemed to have been approved”</p>
<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>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory/standard</b></p>	<p>Article 64 of PPP Law regulates conditions for contractual modifications.</p>

<b>contractual provisions (if any):</b>	
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Articles 63 and 64 of PPP Law establishes the requirement of approval from the Ministry of Finance (for fiscal matters) and from the Managing Authority (for issues of its domain). And additionally the approval from the PPP-Unit is required in case of modification is required by the government.
<b>46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Articles 63 and 64 of the PPP Law establish conditions for changes in the characteristics of works, levels of services, and technical standards of the project. According to this, in any case, the maximum total amount of these new investments may not exceed twenty percent (20 %) of the final investment budget of the work at any stage of the contract. This amount will be updated to the date of presentation of the modification using the consumer price index.
<b>A change in the risk allocation of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the financial and/or economic balance of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Articles 63 and 64 of the PPP Law establish conditions for changes in the net present value of the incomes of the project and other compensations in case the contract conditions impact negatively the financial equilibrium.
<b>A change in the duration of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Articles 63 and 64 of the PPP Law establish conditions for modifications of the contract and include changes in the length of the contract that should not go over the maximum contractual period established in the law (article 63.d)
<b>A change in the agreed price or tariff.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard</b>	Articles 63 and 64 of the PPP Law establish conditions for modifications to the PPP contract include changes to the agreed tariffs (article 63.e)

<b>contractual provisions (if any):</b>	
<b>46.3. Can the procuring authority unilaterally modify a PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 63 of PPP Law regulates the right of the procuring authority to require variations in the contract and establishes the need to obtain an approval from the Ministry of Finance (for fiscal matters) and from the Managing Authority (for issues of its domain), and additionally the approval from the PPP-Unit is required.
<b>47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Articles 69 and 70 of the PPP Law regulate conditions for termination in case of force majeure.
<b>Material Adverse government action .</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 61 of the PPP Law establishes conditions for the private partner to request compensation in case of adverse action of public authorities.
<b>Change in the Law.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 61 of the PPP Law establishes conditions for the private partner to request compensation in case of adverse action produced by change in legislations.
<b>Refinancing.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Subcontracting and replacement of the subcontractors.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 30.e of the PPP Law establishes the right of the private partner to subcontract in order to develop works and offer services, as long as the PPP contract does not prohibit it. Also, the private partner remains responsible, and not the subcontractors, for its obligations with the government.

<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>	<p>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Article 92 of the PPP Law: Every PPP contract may provide national or international mechanisms for the resolution of disputes arising from its interpretation, implementation, or performance. These mechanisms must include, at a minimum, one direct settlement stage and one stage that has the participation of a group of specialists, in order for the parties to attend those meetings in the search for a prompt and effective solution to the dispute. The standards contained in article 93 of this law, and the following ones of this chapter, shall also apply when the parties do not agree on a different mechanism in the PPP contract.</p>
<b>48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body</b>	<p>No</p>
<b>If yes, please specify:</b>	<p>n/a</p>
<b>Local courts</b>	<p>No</p>
<b>Domestic arbitration</b>	<p>Yes</p>
<b>International arbitration</b>	<p>Yes</p>
<b>Investor-State Dispute Settlement (ISDS)</b>	<p>Yes</p>
<b>Mediation</b>	<p>Yes</p>
<b>Please provide the relevant legal/ regulatory/standard contractual provisions (if any)</b>	<p>Articles 92 and 93 of the PPP Law. Article 92 of the PPP Law: Every PPP contract may provide national or international mechanisms for the resolution of disputes arising from its interpretation, implementation, or performance.</p>
<b>48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	<p>Article 101 of the PPP Law that establishes that the arbitral award has the same force as a court ruling. Further regulation in Arbitration Law, Title IV (<a href="http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-mediacion-conciliacion-y-arbitraje">http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-mediacion-conciliacion-y-arbitraje</a>)</p>
<b>International arbitration</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/ regulatory provisions/standard</b>	<p>Article 101 of the PPP Law that establishes that the arbitral award has the same force as a court ruling. Further regulated by Arbitration Law, Title IV (<a href="http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-mediacion-conciliacion-y-arbitraje">http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-mediacion-conciliacion-y-arbitraje</a>). El Salvador</p>



<b>contractual provisions (if any):</b>	is a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	Article 101 of the PPP Law that establishes that the arbitral award has the same force as a court ruling. Further regulated by Arbitration Law, Title IV ( <a href="http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-mediacion-conciliacion-y-arbitraje">http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-mediacion-conciliacion-y-arbitraje</a> ). El Salvador is a member of both the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the ICSID Convention.
<b>49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article. 73 of the PPP Law: “in accordance with the terms stipulated in the contract, the contracting state institution shall declare the termination of the contract in the event of a serious breach of contract or abandonment of the project by the private participant. The procuring authority shall appoint a comptroller who shall have the powers to ensure compliance with the public private partnership contract. This comptroller must fulfill its obligations with the diligence of a good businessman who owns his own business and shall respond civilly, criminally, and administratively for the actions or willful or negligent omissions that may take place during the performance of the duties of the position. Within one hundred and eighty days after the statement of breach or abandonment, the contracting state institution shall appoint a new private participant from a list made up by the majority of creditors. Members of said list must fulfill the requirements established in the tender guidelines, requirements which may be modified by resolution of the presa board of directors, under new considerations revealing that the original ones were insufficient. (1) in the event that the replacement has not taken place during that time, the contracting state

	institution shall hold a tender process for the contract for the remaining period or for a new one, prior approval of the PROESA board of directors. The statement of breach shall lead to the enforcement of the surety bonds set out under this law, the regulation, and the contract.”
<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>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Other.</b>	Yes
<b>Please Specify:</b>	Article. 73 of the PPP Law: “in accordance with the terms stipulated in the contract, the contracting state institution shall declare the termination of the contract in the event of a serious breach of contract or abandonment of the project by the private participant. The procuring authority shall appoint a comptroller who shall have the powers to ensure compliance with the public private partnership contract. This comptroller must fulfill its obligations with the diligence of a good businessman who owns his own business and shall respond civilly, criminally, and administratively for the actions or willful or negligent omissions that may take place during the performance of the duties of the position. Within one hundred and eighty days after the statement of breach or abandonment, the contracting state institution shall appoint a new private participant from a list made up by the majority of creditors. Members of said list must fulfill the requirements established in the tender guidelines, requirements which may be modified by resolution of the presa board of directors, under new

	<p>considerations revealing that the original ones were insufficient. (1) in the event that the replacement has not taken place during that time, the contracting state institution shall hold a tender process for the contract for the remaining period or for a new one, prior approval of the PROESA board of directors. The statement of breach shall lead to the enforcement of the surety bonds set out under this law, the regulation, and the contract.”</p>
<p><b>51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</b></p>	<p>Yes</p>
<p><b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b></p>	<p>Articles 70, 71, 72 and 73 of the PPP Law set procedures and conditions for termination.</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/standard contractual provisions (if any):</b></p>	<p>Articles 70, 71, 72 and 73 of the PPP Law set procedures, conditions and consequences of termination.</p>
<p><b>Unsolicited Proposals</b></p>	
<p><b>34. Are unsolicited proposals in El Salvador: (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</b></p>	<p>The PPP Law has a section “Regimen of Private Initiative” (articles 48-52) where it details the procedure to present and evaluate private initiatives.</p>

<b>the relevant 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>	Articles 49 and 50 of PPP Law establishes the obligation of the procuring authority to evaluate the private initiatives and established a procedure for that purpose.
<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>	Articles 49-50 regulate the obligation of the private party to present a prefeasibility study. After that, if the authorities declare interest on the project they request a full feasibility study. Also, article 48 restricts private initiatives to projects declare self sustainable, project that are not under evaluation by a procuring authority and projects that include innovations compare to traditional public works.
<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 relevant legal/regulatory provisions (if any):</b>	n/a
<b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>The procuring authority does not evaluate</b>	No

<b>unsolicited proposals against existing government priorities.</b>	
<b>Please elaborate and provide examples:</b>	n/a
<b>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 50 of PPP Law:  “statements of interest shall be published one single time in two national newspapers, as well as in the institutional website of the contracting state institution and of presa, so that third parties, in a maximum period of sixty days, may state their interest regarding the implementation of an alternative project relying upon any asset belonging to the state, identified in the original proposal. presa and the contracting state institution, shall be entitled to undertake the promotion activities they deem convenient and which they believe shall foster the participation of interested third parties. should there be no third parties interested in the implementation of an alternative project, the proponent of the private initiative must submit the feasibility studies under the terms of article 32 of this law, within a one-year period. this period may be extended through a reasoned resolution. should there be one or more parties interested in the implementation of an alternative project, they must guarantee that they will submit a prefeasibility study within no more than ninety days. once the studies have been received, the contracting state institution, in coordination with the presa board of directors and in a maximum period of forty-five days, must select the duly substantiated proposal that offers the project exhibiting the most social profitability. in addition, the respective proponent shall be required to submit the feasibility study under the terms of article 32 of this law. all proponents who participated in the process must be notified of the decisions made jointly between the contracting state institution and the presa board of directors.”</p>
<b>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Article 50 of the PPP Law, the PPP-Unit (PROESA) and the Procuring Authority promote the participation of new interested parties. In case there are other interested parties, they will be given 60 days to indicate their interest regarding the implementation of a project presented as unsolicited proposals. In case there are more interested parties, then other interested parties will be given a max period of 90 days to present the alternative project (with feasibility study). Then PROESA and the Procuring authority will choose the project with biggest social profitability.</p>
<b>and the time in calendar days:</b>	60

<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>	No
<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>	Literal b of Article 51 of the PPP Law establishes the right of the proponent to be reimbursed for their expenses. Literal a of Article 51 of the PPP Law establishes the right of the proponent to match the best offer and then access to another stage.