



**PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN GERMANY**

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>The general procurement and budgetary regulatory framework in Germany does not distinguish between PPPs and other delivery modes. PPPs in Germany are thus considered one of the available alternatives to develop infrastructure, so consequently the general procurement and budgetary framework applies to PPPs as it would to any other project for purposes of appraisal and procurement respectively. The main legal instruments of this general procurement and budgetary framework are the Act Against Restraints of Competition (GWB), specifically its Part 4 and, broadly establishing the key principles of public procurement, Section 55 of the Federal Budget Code (BHO). In 2005, Germany adopted the PPP Acceleration Act (ÖPP Beschleunigungsgesetz, 2005) that introduced PPP specifically tailored provisions to the aforementioned applicable regulatory framework and in particular to the Act Against Restraints of Competition and the Regulation on the Award of Public Contracts or Public Procurement Ordinance. The PPP Acceleration Law also introduced modifications to the preexisting Federal Road Construction Financing Act - (Fernstraßenbauprivatfinanzierungsgesetz, originally adopted in 1993 and last amended in 2017). The Federal Road Construction Financing Act regulates the specific aspects applicable to the F-model of federal highway development (named according to the mentioned Act and based on charging tolls to all users, in contrast with model A and V based on tolls to trucks exclusively and availability payments respectively) fundamentally regarding toll and toll charges regulation and oversight. The general procurement framework is based on Section 55 of the Federal Budget Code (BHO) and more specifically developed by Part 4 of the Act Against Restraints of Competition (GWB). The procurement framework is complemented by the Regulation on the Award of Public Contracts or Public Procurement Ordinance (Vergabeverordnung - VgV, that also refers to applicable provisions of the Procurement and Contracting Regulations for Construction Services - Verweisung auf die Vergabe- und Vertragsordnung für Bauleistungen - VOB/A) and the Concessions Ordinance (KonzVgV). All the frameworks are consistent with the applicable European directives, in particular, EU Directives No. 2014/23/EU, No. 2014/24/EU and No. 2014/25/EU. For public contracts below the applicable EU threshold, only specific national rules apply but that threshold is clearly below the case study assumptions for this project.</p>
<b>and provide a link to a government-supported website where the</b>	<p>In general: <a href="http://www.gesetze-im-internet.de">www.gesetze-im-internet.de</a>; for a translation of the general procurement and budget provisions: <a href="http://www.gesetze-im-internet.de/Teilliste_translations.html">www.gesetze-im-internet.de/Teilliste_translations.html</a>            In particular: (i) GWB: <a href="http://www.gesetze-im-internet.de/englisch_gwb/index.html">http://www.gesetze-im-internet.de/englisch_gwb/index.html</a> (ii) BHO: <a href="http://www.gesetze-im-internet.de/bho/">http://www.gesetze-im-internet.de/bho/</a>; (iii) ÖPP Beschleunigungsgesetz: <a href="http://www.bgbl.de/xaver/bgbl/start.xav?start=//*[@attr_id=%27bgbl105s2676.pdf%27]#__bgbl__%2F%2F*[%40attr_id%3D%27bgbl105s2676.pdf%27]__1494854882423">www.bgbl.de/xaver/bgbl/start.xav?start=//*[@attr_id=%27bgbl105s2676.pdf%27]#__bgbl__%2F%2F*[%40attr_id%3D%27bgbl105s2676.pdf%27]__1494854882423</a> (iv)</p>

<b>mentioned regulatory framework is available or provide an electronic copy of it:</b>	Fernstraßenbauprivatfinanzierungsgesetz <a href="http://www.gesetze-im-internet.de/fstrprivfing/">http://www.gesetze-im-internet.de/fstrprivfing/</a> (v) Ministry of Economics and Energy ( BMWi ) description and links to the general procurement framework: <a href="https://www.bmwi.de/Redaktion/DE/Artikel/Wirtschaft/vergabe-uebersicht-und-rechtsgrundlagen.htm">https://www.bmwi.de/Redaktion/DE/Artikel/Wirtschaft/vergabe-uebersicht-und-rechtsgrundlagen.htm</a> ; (vi) Federal Ministry of Transport and Digital Infrastructure (BMVI) explanations of the PPP model applied by that Ministry: <a href="http://www.bmvi.de/SharedDocs/DE/Artikel/StB/oepp-uebersicht-einleitung.html?nn=12830">http://www.bmvi.de/SharedDocs/DE/Artikel/StB/oepp-uebersicht-einleitung.html?nn=12830</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>	Yes
<b>Please describe:</b>	In 2016 and 2017 EU Directives No. 2014/23/EU, No. 2014/24/EU and No. 2014/25/EU have been transposed into German Public Procurement Law.
<b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b>	Yes
<b>Please describe:</b>	In June 2017, the parliament adopted legislation that will amend the basic law of Germany and restructure the competencies and management responsibilities for motorways: “Neuregelung des bundesstaatlichen Finanzausgleichsystems ab 2020” (New regulation of the federal financial compensation system from 2020) creates a public limited infrastructure company to centralize the construction, planning and operation of the federal highways. A central entity for motorway infrastructure will be created and the possibilities for PPP reframed. Centralization of competences for planning, financing, building and maintaining motorways on the federal level. Privatization of the whole network of motorways or of the whole network of federal highways or of substantial parts thereof in a Land is prohibited. Individual PPP-projects may cover up to 100 km of highway but must not be connected with each other (§ 5 (2) Law on the Establishment of an Infrastructure Company for Motorways and other Federal Highways)
<b>3.1 Besides national defense and</b>	No

<p><b>other matters 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>	<p>n/a</p>
<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>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	<p>n/a</p>
<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</b></p>	<p>No</p>

<b>sectors?: Energy generation and distribution.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<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>	No
<b>If yes, specify and provide the relevant legal/regulatory provisions:</b>	n/a
<b>4. Does the regulatory</b>	No

<b>framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</b>	
<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 Germany and provide their website(s) (if available):</b>	<p>Any public authority is allowed to procure PPP. This includes federal government, all state governments, local authorities (administrative district (Landkreis) or municipality (Gemeinde)) or a corporate body (Körperschaft) or institution under public law (Anstalt öffentlichen Rechts). Which authority will be the PPP procuring authority depends on the public service to be procured. Almost all of them have or intend to procure PPPs. A database at <a href="http://www.pd-g.de">www.pd-g.de</a> shows most of the authorities that experienced PPP so far. With respect to federal motorways procuring authorities are usually the higher road construction authorities of the Länder and, as a service provider for some of them, the DEGES (<a href="http://www.deges.de">www.deges.de</a>); they closely cooperate with the Federal Ministry of Transport and Digital Infrastructure.</p>
<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>	<p>Germany has two PPP units which advise the procuring authorities on PPPs: a) PD - Partnership Deutschland -The in-house advisor to the public sector on PPPs (PD-Partnerschaft Deutschland-Berater der öffentlichen Hand GmbH) <a href="http://www.pd-g.de/home/">www.pd-g.de/home/</a> b) In the motorway sector, the Transport Infrastructure Financing Company, a limited liability company owned by the Federal Government, Ministry of Transport and Digital Infrastructure (Verkehrsinfrastrukturfinanzierungsgesellschaft mbH - VIFG) <a href="http://www.vifg.de/de/index.php">www.vifg.de/de/index.php</a>; <a href="http://www.vifg.de/de/infrastrukturprojekte-finanzierung/oepp-kompetenzzentrum/Verkehrsinfrastrukturfinanzierungsgesellschaft">http://www.vifg.de/de/infrastrukturprojekte-finanzierung/oepp-kompetenzzentrum/Verkehrsinfrastrukturfinanzierungsgesellschaft</a>. Furthermore, since Germany is a federal country, there are various PPP task forces at the level of the states: i.e. PPP Task Force NRW (now: Task Force infrastructure NRW) <a href="http://www.ppp.nrw.de">www.ppp.nrw.de</a>. Finally, within the Federal Ministry of Finance the Budget Division, Unit II B 6, also performs duties related to</p>

	PPPs (PPP regulation and policy guidance, strategy, coordination).
<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	No
<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>	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>	Yes
<b>6.8 Approval of PPP projects.</b>	No

<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>	<p>Partnerschaft Deutschland (Partnership Germany) has the mission to improve public service provision and investments in infrastructure and real estate projects - from the development of strategic concepts to assistance during the implementation process. PD was established in 2008 by the Federal Ministry of Finance and the Federal Ministry of Transportation, Building and Urban Development as an independent consulting company to support exclusively public sector clients. In particular, PD construction/infrastructure division supports the public sector in complex and large investment projects to identify the most efficient option for structuring, procurement and successful implementation.</p> <p>The Transport Infrastructure Finance Company (VIFG) - a company owned by the Federal Government with statutorily regulated duties- was founded in Berlin in 2003. The establishment and duties of VIFG are defined in the "Law for the establishment of a transport infrastructure finance company for the funding of federal roads (Verkehrsinfrastrukturfinanzierungsgesellschaftsgesetz - VIFGG)". This law empowers the Federal Ministry of Transport and Digital Infrastructure (BMVI) to delegate certain tasks of the Federal Government in regard to the financing of the transport infrastructure to VIFG, as well as tasks related to the Fernstraßenbauprivatfinanzierungsgesetz (German Act on Private Financing for Transport Infrastructure) or comparable private transport infrastructure projects.</p> <p>Pursuant to § 2(2) of the Law on the Establishment of an Infrastructure Company for Motorways and other Federal Highways, the VIFG will be merged on the new Infrastructure Company for Motorways and other Federal Highways as soon as it is established.</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>	No
<b>If yes, please provide the</b>	n/a

<b>relevant legal/regulatory provisions (if any):</b>	
<b>8.1. Does the Ministry of Finance or Central Budgetary Authority 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>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Federal Budget Code (BHO) and related administrative regulations; PPP projects are - in addition to the usual budget figures - accounted for in summary Table X of the Federal Budget. In particular, Article 16 of the Federal Budget Regulation (BHO) states that the commitment appropriations are to be shown separately for the respective expenses. Where commitments can be entered for several years, the annual amounts should be indicated in the budget. Article 17.2 continues stating that in the case of expenditure on a multi-annual measure, the first estimate of the budget shall show the total foreseeable costs and, in the case of each subsequent estimate, the financial implementation. Finally, Article 24 of the Federal Budget Regulation (BHO) establishes that: (1) Expenditure and commitment appropriations for construction activities may only be estimated when plans, cost estimates and explanations are provided showing the nature of the execution, the costs of construction, the acquisition of land and the facilities, the financing provided and a timetable. The documents must be accompanied by an estimate of the annual budgetary burden arising after completion of the action. (2) Expenditure and commitment appropriations for larger purchases and major development projects may only be estimated when planning and estimates of costs and costs are made. Paragraph 1 sentence 2 shall apply mutatis mutandis. (3) Exceptions from paragraphs 1 and 2 shall only be allowed if in individual cases it is not possible to complete the documents in a timely manner and a disadvantage would arise from a subsequent assessment to the Federation. The need for an exemption is justified in the explanatory notes. The</p>



	expenditure and commitment appropriations for measures for which the dossier has not yet been available are blocked.
<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>	Commitment appropriations must be approved by the parliament and are shown in summary Table X of the Federal Budget.
<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>	Commitment appropriations are shown in summary Table X of the Federal Budget.
<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.</b>	Yes

<b>European System of Accounts).</b>	
<b>Please specify:</b>	European Public Sector Accounting Standards (EPSAS)
<b>Other.</b>	No
<b>Please specify:</b>	n/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>	No
<b>If yes, please specify the relevant authority</b>	n/a
<b>and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s)</b>	No

<b>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>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</b>	Yes

<p><b>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></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>As explained above, in Germany, PPPs are not a different alternative for infrastructure investment but are fully integrated within the regular procurement and budgetary process that will be applicable to any other type of investment. PPP is just a procurement option or alternative to be considered based on the general budgetary laws. In particular, § 7 (2) of BHO (Federal Budgetary Act) requires to assess the economic feasibility of each project. In this sense, for example in the transportation sector, investment priorities are laid down in the Federal Transportation Infrastructure Plan (<a href="http://www.bmvi.de/SharedDocs/EN/Documents/G/ftip-2030.pdf?__blob=publicationFile">http://www.bmvi.de/SharedDocs/EN/Documents/G/ftip-2030.pdf?__blob=publicationFile</a>) containing an overarching concept. Separate requirement plans for roads, railways and waterways, which are annexed to laws on the expansion of the road network, the rail network and the network of waterways respectively, further elaborate this concept. On that basis, the annual budget prioritizes the investments, however, without determining the delivery mode which is a question of procurement. Further information and methodologies for the development of those studies can be found in: <a href="http://www.vifg.de/en/infrastructure-projects-financing/service-centre-efficiency/index.php">http://www.vifg.de/en/infrastructure-projects-financing/service-centre-efficiency/index.php</a>; <a href="http://www.bbsr.bund.de/BBSR/DE/FP/AO/WohnenBauen/MoeglichkeitenGrenzenPppModelle/Downloads/Leitfaden2.pdf?__blob=publicationFile&amp;v=2">http://www.bbsr.bund.de/BBSR/DE/FP/AO/WohnenBauen/MoeglichkeitenGrenzenPppModelle/Downloads/Leitfaden2.pdf?__blob=publicationFile&amp;v=2</a></p>
<p><b>The regulatory framework prescribes the need for PPPs to be consistent with all other</b></p>	<p>No</p>

<b>investment priorities without establishing a specific procedure to achieve that goal.</b>	
<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 government investment priorities in practice.</b>	No
<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</b>	Yes

<b>accordance with the provisions of the regulatory framework described above?</b>	
<b>If yes, please specify:</b>	Contributors confirm that prioritization along with other investment projects is done in practice. The procedure only leads to a PPP project, if the economic feasibility study provides for a positive result for a PPP.
<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>	<p>§ 7 of BHO (Federal Budgetary Act) requires in subsection (1) that the principles of efficiency and economy shall be observed in preparing and executing the budget. These principles shall impose an obligation to examine the extent to which government tasks or economic activities serving public purposes may be accomplished through divestiture and denationalisation or privatisation. According to subsection (2), appropriate economic feasibility studies shall be conducted for all measures that have a fiscal impact. The risk allocation associated with such measures shall also be taken into consideration in the process. In suitable cases, private-sector providers shall be given the opportunity to demonstrate whether and to what extent they can perform government tasks or economic activities serving public purposes with equal or greater efficiency (expression of interest procedure). Finally subsection (3) provides that cost and activity accounting shall be introduced in suitable areas.</p> <p>Further elaboration are provided by related administrative regulations and annexed "Introduction to economic feasibility studies" issued by the German Federal Ministry of Finance; Guidelines on economic feasibility studies for PPP projects issued by the Finance Ministers' Conference.</p> <p>(<a href="http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-wirtschaftlichkeit-pdf/von/leitfaden-der-ppp-initiative-wirtschaftlichkeitsuntersuchung-bei-">http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-wirtschaftlichkeit-pdf/von/leitfaden-der-ppp-initiative-wirtschaftlichkeitsuntersuchung-bei-</a></p>

	ppp-projekten/vom/finanzministerium/568).
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	The individual aspects to be taken into account in a cost-benefit analysis can be found in the "Introduction to the economic efficiency studies" of the German Federal Ministry of Finance (introduction by circular from 12.01.2011, as amended by circular of 20.12.2013). Particular examples can be found in the current Federal Transportation Infrastructure Plan ( <a href="http://www.bmvi.de/SharedDocs/EN/Documents/G/ftip-2030.pdf?__blob=publicationFile">http://www.bmvi.de/SharedDocs/EN/Documents/G/ftip-2030.pdf?__blob=publicationFile</a> )
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirm 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>	In general, § 7 of BHO (Federal Budgetary Act) requires in subsection (1) that the principles of efficiency and economy shall be observed in preparing and executing the budget. More specifically, Article 24 of BHO (Federal Budgetary Act) provides: (1) Expenditure and commitment appropriations for construction activities may only be estimated when plans, cost estimates and explanations are provided, showing the nature of the execution, the costs of construction, the acquisition of land and facilities, the provided financing and a timetable. The documents must be accompanied by an estimate of the annual budgetary burden arising after completion of the action. The necessary commitment appropriations are transparently laid down in summary table X of the federal budget.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	The administrative regulations related to the Federal Budgetary Act and their annexes; Guidelines on economic feasibility studies for PPP projects issued by the Finance Ministers' Conference ( <a href="http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-">http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-</a>

	wirtschaftlichkeit-pdf/von/leitfaden-der-ppp-initiative-wirtschaftlichkeitsuntersuchung-bei-ppp-projekten/vom/finanzministerium/568).
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirm 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>	Subsection 2 of § 7 of BHO (Federal Budgetary Act) establishes that appropriate economic feasibility studies shall be conducted for all measures that have a fiscal impact. The risk allocation associated with such measures shall also be taken into consideration in the process. In suitable cases, private-sector providers shall be given the opportunity to demonstrate whether and to what extent they can perform government tasks or economic activities serving public purposes with equal or greater efficiency (expression of interest procedure).
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	The administrative regulations related to the Federal Budgetary Act and their annexes; Guidelines on economic feasibility studies for PPP projects issued by the Finance Ministers' Conference ( <a href="http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-wirtschaftlichkeit-pdf/von/leitfaden-der-ppp-initiative-wirtschaftlichkeitsuntersuchung-bei-ppp-projekten/vom/finanzministerium/568">http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-wirtschaftlichkeit-pdf/von/leitfaden-der-ppp-initiative-wirtschaftlichkeitsuntersuchung-bei-ppp-projekten/vom/finanzministerium/568</a> ).
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirm that the assessment happens 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>	Yes



<b>Relevant legal/regulatory provision (if any)</b>	§ 7 of BHO (Federal Budgetary Act) establishes (1) that the principles of efficiency and economy shall be observed in preparing and executing the budget. These principles shall impose an obligation to examine the extent to which government tasks or economic activities serving public purposes may be accomplished through divestiture and denationalisation or privatisation. (2) Appropriate economic feasibility studies shall be conducted for all measures that have a fiscal impact. The risk allocation associated with such measures shall also be taken into consideration in the process. In suitable cases, private-sector providers shall be given the opportunity to demonstrate whether and to what extent they can perform government tasks or economic activities serving public purposes with equal or greater efficiency (expression of interest procedure).
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	The administrative regulations related to the Federal Budgetary Act and their annexes issued by the Federal Ministry of Finance; Guidelines on economic feasibility studies for PPP projects, issued by the Finance Ministers' Conference. ( <a href="http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-wirtschaftlichkeit-pdf/von/leitfaden-der-ppp-initiative-wirtschaftlichkeitsuntersuchung-bei-ppp-projekten/vom/finanzministerium/568">http://broschueren.nordrheinwestfalendirekt.de/herunterladen/der/datei/000000-wirtschaftlichkeit-pdf/von/leitfaden-der-ppp-initiative-wirtschaftlichkeitsuntersuchung-bei-ppp-projekten/vom/finanzministerium/568</a> ). Economic feasibility analysis for public-private partnerships: analysis and potential: <a href="https://www.pd-g.de/unsere-beratungsangebote/grundlagenarbeit/standardisierung/wu-annahmen/">https://www.pd-g.de/unsere-beratungsangebote/grundlagenarbeit/standardisierung/wu-annahmen/</a> ; <a href="https://www.pd-g.de/fileadmin/Daten/Grundlagenarbeiten/WU-Annahmen/160226_OePP_SR-Bd-18_WU-Annahmen.pdf">https://www.pd-g.de/fileadmin/Daten/Grundlagenarbeiten/WU-Annahmen/160226_OePP_SR-Bd-18_WU-Annahmen.pdf</a> Value for Money assessment for motorway projects: <a href="http://www.vifg.de/en/infrastructure-projects-financing/service-centre-efficiency/methodology-of-vfm/">http://www.vifg.de/en/infrastructure-projects-financing/service-centre-efficiency/methodology-of-vfm/</a>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirm that the assessment happens in practice.
<b>12.5. Financial viability or bankability assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	According to our contributors, while there is no specific regulatory requirement to conduct bankability assessments, this type of assessment happens in practice, since bankability is also covered by the "Introduction to the economic efficiency studies" and is part of the risk identification and the WU analysis mentioned above.

<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirm that the assessment happens in practice.
<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>	Market consultations prior to launching procurement procedure, § 28 VgV: 1. Prior to the initiation of a procurement procedure, the contracting authority may carry out market surveys for the purpose of preparing the award of contracts and informing undertakings of its procurement plans and requirements. (2) It is not permissible to carry out procurement procedures for the purposes of market recognition and cost or price determination.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Included as part of the analysis of economic viability and also procurement process § 28 VgV .
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors answering this question confirm that the assessment is done in practice
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Environmental Impact Assessment (EIA) is required as integral part of the planning decision according to the "Gesetz über die Umweltverträglichkeitsprüfung(UVPG)
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	European Regulation and transposed applicable rules (the mentioned "Gesetz über die Umweltverträglichkeitsprüfung (UVPG) and associated regulations describe the methodology to conduct the Environmental Impact Assessment.
<b>Is the assessment</b>	Yes

<b>done in practice?</b>	
<b>Details:</b>	Contributors answering this question confirm 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>	The consultation process with affected communities is an integral part of the planning decision based on the regulatory requirements mentioned e.g. in the "Gesetz über die Umweltverträglichkeitsprüfung (UVPG)" and in the "Verwaltungsverfahrensgesetz VwVfG" and "Baugesetzbuch BauGB".
<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 answering this question confirm that the assessment is done in practice
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	§§ 19 (2), 20 UVPG for Environmental Impact Assessment

<b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b>	<a href="http://www.bmvi.de/SharedDocs/EN/Documents/G/ftip-2030.pdf?__blob=publicationFile">http://www.bmvi.de/SharedDocs/EN/Documents/G/ftip-2030.pdf?__blob=publicationFile</a> (for Federal Transportation Infrastructure Plan); <a href="https://www.uvp-portal-bund.de/">https://www.uvp-portal-bund.de/</a> (for Environmental Impact Assessment)
<b>13.1. Are the assessments published online?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>specify the website</b>	n/a
<b>please specify which of the assessments are published online:</b>	n/a
<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>	According to § 16 KonzVgV regarding the tender documents, these shall cover any document produced or referred to by the concessionaire for the purpose of describing or defining elements of the concession or procedure. These include, in particular, the terms of reference, the draft terms of the contract, the submission of documents by candidates or tenderers and information on general obligations. Also, according to § 8 (1) EU VOB/A German Construction Contract Procedures, the tender documents consist of (1) the letter (invitation to tender), optionally Terms and conditions (paragraph 2) and (2) the contract documents (§§ 7 to 7c and 8a).
<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</b>	§ 17 KonzVgV Provision of the tender documents: (1) In the invitation, to submit an invitation to tender, the licensing authority shall provide an electronic address in the concession notice or, where the concession notice does not contain an invitation to tender, an electronic address

<b>legal/regulatory provisions (if any):</b>	<p>under which the contract documents may be obtained free of charge, fully, directly and completely. More in general, Subsection 1 of § 41 VgV states that, in general except for cases provided in the same article subsection (2), the procuring authority shall specify in the contract notice or invitation to confirm interest an electronic address, an electronic address under which the contract documents may be obtained free of charge, without restriction, in full and directly. For the award of construction contracts exceeding the EU-thresholds § 12 EU VOB/A applies.</p>
<b>and please specify the website:</b>	<p>www.bund.de; www.ted.europa.eu</p>
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	<p>Yes</p>
<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>	<p>a) Highway sector: (i) Model contract for the availability model for PPP projects in the Federal Highway sector (non-compulsory) accessible via <a href="http://www.bmvi.de/SharedDocs/DE/Anlage/VerkehrUndMobilitaet/Strasse/oepp%20systematische%20darstellung%20projektvertraeglicher%20regelungen.pdf?__blob=publicationFile">http://www.bmvi.de/SharedDocs/DE/Anlage/VerkehrUndMobilitaet/Strasse/oepp%20systematische%20darstellung%20projektvertraeglicher%20regelungen.pdf?__blob=publicationFile</a>  b) Accommodation/social infrastructure: <a href="https://www.pd-g.de/unsere-beratungsangebote/grundlagenarbeit/standardisierung/oepp-mustervertrag-fuer-ein-inhabermodell-im-hochbau/">https://www.pd-g.de/unsere-beratungsangebote/grundlagenarbeit/standardisierung/oepp-mustervertrag-fuer-ein-inhabermodell-im-hochbau/</a> c) Buildings: <a href="http://www.bbsr.bund.de/BBSR/DE/FP/AO/WohnenBauen/MoeglichkeitenGrenzenPppModelle/Downloads/Leitfaden5Inhabermodell.pdf?__blob=publicationFile&amp;v=2">http://www.bbsr.bund.de/BBSR/DE/FP/AO/WohnenBauen/MoeglichkeitenGrenzenPppModelle/Downloads/Leitfaden5Inhabermodell.pdf?__blob=publicationFile&amp;v=2</a></p>
<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:</b>	<p>Yes</p>

<b>Procuring authority (or other Government entity)</b>	
<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>16.2. Obtaining the required environmental permits: 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</b>	No regulatory basis

<b>ry provision (if any)</b>	
<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>	No regulatory basis
<b>16.4. Obtaining the required land: 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>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</b>	No



<b>specified and/or its members are required to meet detailed qualifications.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<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</b>	Several general public procurement provisions: According to §12 EU VOB/A public procurement must be made public. Similarly, according to § 37 VgV, the contracting authority shall notify its intention to award a public contract or to conclude a framework agreement in a contract notice. Finally, § 19 KonzVgV states that the procuring authority shall notify its intention to award a concession in a concession notification.

<b>the relevant legal/regulatory provisions (if any):</b>	
<b>19.1. If yes, is the public procurement notice published online?</b>	<p>Yes</p>
<b>If yes, please specify the website:</b>	<p>www.ted.europa.eu; www.bund.de</p>
<b>20. Are foreign companies prohibited from participating in the bidding process?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<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>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>§ 27 KonzVgV provides (1) When setting the time limits, the concessionaire shall take account in particular of the complexity of the concession and the time required for the submission of applications and the preparation of tenders. (2) A sufficiently long deadline is to be observed, in particular, if a visit to the site or a personal inspection is necessary in non-transmitted facilities to the tender documents on the spot. (3) The minimum time limit for the receipt of requests to participate, with or without an offer, shall be 30 days from the day following the date of the transmission of the concession notice. Similar and broader provisions contained in §§ 17(2) and (6) VgV; 20 VgV §§ 10, 10b, 10c VOB/A-EU.</p>

<b>and the time in calendar days:</b>	30
<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>	<p>§ 12 KonzVgV provides (1) The procuring authority may freely design the procedure for the award of concessions in accordance with this Regulation. The procuring authority may align the procedure with the provisions of the Public Procurement Ordinance with the objective of conducting a procedure with competition. (2) The process can be carried out in one or more stages. The procuring authority may negotiate with applicants and tenderers. During the negotiations, the concessionary object, the minimum requirements for the offer and the award criteria may not be changed. (3) The procuring authority shall not discriminate against candidates or tenderers in the transmission of information. More broadly § 119 I GWB regulates the different available procedures (1) Public contracts shall be awarded in open procedures, restricted procedures, negotiated procedures, competitive dialogue or innovation partnerships. (2) Contracting authorities may freely choose between the open procedure and the restricted procedure, which always requires competitive tendering. The other types of procedures are only available to the extent permitted by this Act. (3) The open procedure is a procedure in which the contracting authority publicly invites an unlimited number of undertakings to submit tenders. (4) The restricted procedure is a procedure in which the public contracting authority, after a previous public invitation to participate, selects a limited number of undertakings in accordance with objective, transparent and non-discriminatory criteria (competitive tender) and invites these to submit tenders. (5) The negotiated procedure is a procedure in which the public contracting authority, with or without competitive tender, approaches selected undertakings in order to negotiate on the tenders with one or more of those undertakings. (6) The competitive dialogue is a procedure for awarding public contracts with the objective of identifying and determining the means that best satisfy the needs of the public contracting authority. After a competitive tender, the public contracting authority shall open a dialogue with the selected undertakings to discuss all aspects of the contract award. (7) The innovation partnership is a procedure for developing innovative supplies, works or services which are not yet available on the market and for acquisition of the services that result therefrom. After a competitive tender, the public contracting authority negotiates in several phases with the selected undertakings on initial and subsequent tenders.</p>
<b>22.2. Restricted tendering</b>	Yes

<b>(with pre-qualification stage): Available</b>	
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>§ 12 KonzVgV provides: (1) The procuring authority may freely design the procedure for the award of concessions in accordance with this Regulation. The procuring authority may align the procedure with the provisions of the Public Procurement Ordinance with the objective of conducting a procedure with competition. (2) The process can be carried out in one or more stages. The procuring authority may negotiate with applicants and tenderers. During the negotiations, the concessionary object, the minimum requirements for the offer and the award criteria may not be changed. (3) The procuring authority shall not discriminate against candidates or tenderers in the transmission of information. More broadly § 119 I GWB regulates the different available procedures (1) Public contracts shall be awarded in open procedures, restricted procedures, negotiated procedures, competitive dialogue or innovation partnerships. (2) Contracting authorities may freely choose between the open procedure and the restricted procedure, which always requires competitive tendering. The other types of procedures are only available to the extent permitted by this Act. (3) The open procedure is a procedure in which the contracting authority publicly invites an unlimited number of undertakings to submit tenders. (4) The restricted procedure is a procedure in which the public contracting authority, after a previous public invitation to participate, selects a limited number of undertakings in accordance with objective, transparent and non-discriminatory criteria (competitive tender) and invites these to submit tenders. (5) The negotiated procedure is a procedure in which the public contracting authority, with or without competitive tender, approaches selected undertakings in order to negotiate on the tenders with one or more of those undertakings. (6) The competitive dialogue is a procedure for awarding public contracts with the objective of identifying and determining the means that best satisfy the needs of the public contracting authority. After a competitive tender, the public contracting authority shall open a dialogue with the selected undertakings to discuss all aspects of the contract award. (7) The innovation partnership is a procedure for developing innovative supplies, works or services which are not yet available on the market and for acquisition of the services that result therefrom. After a competitive tender, the public contracting authority negotiates in several phases with the selected undertakings on initial and subsequent tenders.</p>
<b>22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>§ 12 KonzVgV provides: (1) The procuring authority may freely design the procedure for the award of concessions in accordance with this Regulation. The procuring authority may align the procedure with the provisions of the Public Procurement Ordinance with the objective of conducting a procedure with competition. (2) The process can be carried out in one or more stages. The procuring authority may negotiate with applicants and tenderers. During the negotiations, the concessionary object, the minimum requirements for the offer and the award criteria may not be changed. (3) The procuring authority shall not discriminate against</p>

	<p>candidates or tenderers in the transmission of information. More broadly § 119 I GWB regulates the different available procedures (1) Public contracts shall be awarded in open procedures, restricted procedures, negotiated procedures, competitive dialogue or innovation partnerships. (2) Contracting authorities may freely choose between the open procedure and the restricted procedure, which always requires competitive tendering. The other types of procedures are only available to the extent permitted by this Act. (3) The open procedure is a procedure in which the contracting authority publicly invites an unlimited number of undertakings to submit tenders. (4) The restricted procedure is a procedure in which the public contracting authority, after a previous public invitation to participate, selects a limited number of undertakings in accordance with objective, transparent and non-discriminatory criteria (competitive tender) and invites these to submit tenders. (5) The negotiated procedure is a procedure in which the public contracting authority, with or without competitive tender, approaches selected undertakings in order to negotiate on the tenders with one or more of those undertakings. (6) The competitive dialogue is a procedure for awarding public contracts with the objective of identifying and determining the means that best satisfy the needs of the public contracting authority. After a competitive tender, the public contracting authority shall open a dialogue with the selected undertakings to discuss all aspects of the contract award. (7) The innovation partnership is a procedure for developing innovative supplies, works or services which are not yet available on the market and for acquisition of the services that result therefrom. After a competitive tender, the public contracting authority negotiates in several phases with the selected undertakings on initial and subsequent tenders.</p>
<b>22.4. Competitive dialogue: Available</b>	<p>Yes</p>
<b>Default</b>	<p>No</p>
<b>Relevant legal/regulatory provision (if any)</b>	<p>According to § 12 KonzVgV (1) The procuring authority may freely design the procedure for the award of concessions in accordance with this Regulation. The procuring authority may align the procedure with the provisions of the Public Procurement Ordinance with the objective of conducting a procedure with competition. (2) The process can be carried out in one or more stages. The procuring authority may negotiate with applicants and tenderers. During the negotiations, the concessionary object, the minimum requirements for the offer and the award criteria may not be changed. (3) The procuring authority shall not discriminate against candidates or tenderers in the transmission of information. More broadly § 119 I GWB regulates the different available procedures (1) Public contracts shall be awarded in open procedures, restricted procedures, negotiated procedures, competitive dialogue or innovation partnerships. (2) Contracting authorities may freely choose between the open procedure and the restricted procedure, which always requires competitive tendering. The other types of procedures are only available to the extent permitted by this Act. (3) The open procedure is a procedure in which the contracting authority publicly invites an unlimited number of undertakings to submit tenders. (4) The restricted procedure is a procedure in which the public contracting authority, after a previous public invitation to participate, selects a limited number of undertakings in accordance with objective, transparent and non-discriminatory criteria (competitive tender) and invites these to submit tenders. (5) The negotiated procedure is a procedure in which the public contracting authority, with or without competitive tender, approaches selected undertakings in order to negotiate on the tenders with one or more of those undertakings. (6) The competitive dialogue is a procedure for awarding public contracts with the objective of identifying and determining the means that best satisfy the needs of the public contracting authority. After a competitive tender, the public contracting authority shall</p>

	open a dialogue with the selected undertakings to discuss all aspects of the contract award. (7) The innovation partnership is a procedure for developing innovative supplies, works or services which are not yet available on the market and for acquisition of the services that result therefrom. After a competitive tender, the public contracting authority negotiates in several phases with the selected undertakings on initial and subsequent tenders.
<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>	n/a
<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</b>	According to § 12(3) KonzVgV, the procuring authority shall not discriminate against candidates or tenderers in the transmission of information. Similar provisions are contained in § 97(1) and (2) GWB and §§ 2(1) and (2), 3b (3) No. 9, 8(2) No. 1, 11(3) EU, 12a (1) VOB/A-EU.

<b>ry provisions (if any):</b>	Also, § 29 VgV states that 1. The tender documents shall contain all the information necessary to enable the candidate or tenderer to take a decision on the tender procedure. They usually consist of 1. the cover letter, in particular, the request for the submission of applications for participation or tenders or letters for the submission of the requested documents. 2. the description of the details of the implementation of the procedure (conditions of application), including the eligibility and award criteria, if not already mentioned in the contract notice, and 3. the contract documents, which consist of the terms of the contract.
<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>	§ 122 GWB (4) Selection: criteria must be related and proportionate to the subject matter of the contract. They shall appear in the contract notice, the prior information notice or the invitation to confirm interest. § 51 VgV 1: In the case of all procedures other than open procedure, the contracting authority may limit the number of suitable candidates invited or invited to submit a tender, provided that sufficient candidates are available. To this end, the contracting authority shall specify the objective and non-discriminatory criteria which provides the limitation of the number, the minimum number and the maximum number of applicants to be invited in the contract notice or the call for confirmation of interest.
<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>	Contributors confirm that the specified criteria are respected in practice.
<b>If no, please elaborate:</b>	n/a
<b>23. Can interested</b>	Yes

<p><b>parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b></p>	
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>§ 18 KonzVgV: Additional information on the tender documents: The procuring authority shall provide additional information on the tender documents to all bidders which participate in the award procedure, no later than six days before the closing date for the receipt of tenders, provided that the bidders have requested such additional information in good time. Similar and complementary provisions are included in § 97(1) and (2) GWB, § 12a(3) VOB/A-EU; § 20(3) VgV</p>
<p><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></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>§ 18 KonzVgV Additional information on the tender documents: The procuring authority shall provide additional information on the tender documents to all bidders which participate in the award procedure, no later than six days before the closing date for the receipt of tenders, provided that the bidders have requested such additional information in good time. Similar and complementary provisions are included in § 97(1) and (2) GWB, § 12a(3) VOB/A-EU; More expressly, according to § 20(3) VgV, the extension of the deadline must be proportionate to the importance of the information or modification and ensure that all companies are aware of the information or changes.</p>
<p><b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b></p>	<p>Yes</p>
<p><b>If yes, please specify:</b></p>	<p>Contributors confirm that answers to the questions are communicated to all bidders</p>



<b>If no, please elaborate:</b>	n/a
<b>24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<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>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	n/a
<b>If yes, please specify:</b>	n/a

<b>If no, please elaborate:</b>	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
<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>	<p>§ 31 KonzVgV: (1) The criteria for the award of contracts pursuant to Section 152 (3) of the GWB shall be indicated in descending order of priority. (2) If an offer contains an innovative solution with exceptionally high functional performance, which the licensor has not been able to predict, the order of the award criteria may be amended accordingly. In this case, the procuring authority must notify the bidders of the changed order of the award criteria and to publish a new invitation to tender, subject to the minimum period laid down in Article 27 (4), first sentence. If the award criteria were published at the same time as the concession notification, a new concession notice shall be published with the minimum period pursuant to § 27 (3). (3) Under Article 152 (3) of the GWB, the licensor checks whether the offers actually fulfill the criteria for the award. Similar and complementary provisions are contained in § 127 GWB, § 16 d(2) no. 2 VOB/A-EU; § 58 VgV;</p>

<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</b>	§ 63 VgV (1) The contracting authority is entitled to terminate a contract award procedure in whole or in part if no offer has been received which meets the conditions. Consequently, when a single offer meets the conditions the contract can be awarded.

<b>legal/regulatory provisions (if any):</b>	
<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>	§ 39 VgV: The contracting authority shall, no later than 30 days after the award of a public contract or after the conclusion of a framework agreement, submit a contract notice to the Publications Office of the European Union with the results of the award procedure. Similar and complementary provisions included in § 18(3) VOB/A-EU; § 21 KonzVgV
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	www.bund.de; www-ted.europa.eu
<b>29. Does the procuring authority provide all the bidders with the</b>	Yes

<b>result of the PPP procurement process?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>§ 134 GWB: 1. Contracting authorities must inform the bidders whose tenders are not to be considered in writing by means of the name of the undertaking whose offer is to be accepted on the grounds of the non-taking into account of their bid and the earliest date of conclusion of the contract. This also applies to candidates who have not been given information on the rejection of their application before the notification of the award decision has been sent to the tenderers concerned. Similarly, § 21 KonzVgV states that without prejudice to Section 134 of the Act against Restrictions on Competition, the concessionaire shall immediately notify all candidates or tenderers of the decisions concerning the award, including the name of the successful tenderer, the grounds for the rejection of their applications or tenders and the reasons for a decision to award concessions, for which a concession notification has been published, or to reopen the procedure. Similar and complementary provisions are included in § 19 VOB/A-EU.</p>
<b>If no, please elaborate:</b>	<p>n/a</p>
<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>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>§ 134 GWB: 1. Contracting authorities must inform the bidders whose tenders are not to be considered in writing by means of the name of the undertaking whose offer is to be accepted on the grounds of the non-taking into account of their bid and the earliest date of conclusion of the contract. This also applies to candidates who have not been given information on the rejection of their application before the notification of the award decision has been sent to the tenderers concerned. Similarly, § 21 KonzVgV states that without prejudice to Section 134 of the Act against Restrictions on Competition, the concessionaire shall immediately notify all candidates or tenderers of the decisions concerning the award, including the name of the successful tenderer, the grounds for the rejection of their applications or tenders and the reasons for a decision to award concessions, for which a concession notification has been published, or to reopen the procedure.</p>
<b>30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in</b>	<p>Yes</p>

<b>order to allow unsuccessful bidders to challenge the award decision?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>§ 134 GWB (2): A contract may be concluded only 15 calendar days after dispatch of the information pursuant to paragraph 1. If the information is sent electronically or by fax, the deadline will be reduced to ten calendar days. The period begins on the day after the customer has sent the information; the date of receipt by the tenderer and the tenderer concerned does not apply.</p>
<b>and the time in calendar days:</b>	<p>10</p>
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>§ 134 GWB: 1. Contracting authorities must inform the bidders, whose tenders are not considered, in writing by means of the name of the undertaking, whose offer is accepted, on the grounds of the not taking into account of their bid and the earliest date of conclusion of the contract.</p>
<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>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>§97 (1) and (2) GWB: The participants in a procurement procedure (award procedure) shall be treated equally unless discrimination is expressly required or permitted under this Act. Also the obligation to communicate to all bidders with any substantial change to the terms of the contract (as per § 18 KonzVgV, § 12a (3) VOB/A-EU; § 20(3) VgV) also implies a express prohibition of negotiating the terms of the contract after the award except in the cases where an exception permits a negotiated procedure.</p>

<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	<p>Yes</p>
<b>If yes, please specify:</b>	<p>Contributors confirm that the restriction to negotiate after the award is respected in practice.</p>
<b>If no, please elaborate:</b>	<p>n/a</p>
<b>32. Does the procuring authority publish 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>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>	<p>n/a</p>
<b>Publication of the full PPP contract without including all its annexes and appendixes</b>	<p>n/a</p>
<b>Publication of a summary of the PPP contract without publishing the</b>	<p>n/a</p>

<b>full PPP contract</b>	
<b>Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>32.2. If yes, is it published online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>PPP Contract Management</b>	
<b>41. Has the procuring or contract management authority established a system to</b>	Yes



<b>manage the implementation 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>Usually part of the contract. For example, § 26 of the model contract for the availability model for PPP projects in the highway sector regulates the monitoring and control rights of the client (the procuring authority). Further references will be made to the model contract for the availability model for PPP projects in the highway sector, accessible via <a href="http://www.bmvi.de/SharedDocs/DE/Anlage/VerkehrUndMobilitaet/Strasse/oepp%20systematische%20darstellung%20projektvertraglicher%20regelungen.pdf?__blob=publicationFile">http://www.bmvi.de/SharedDocs/DE/Anlage/VerkehrUndMobilitaet/Strasse/oepp%20systematische%20darstellung%20projektvertraglicher%20regelungen.pdf?__blob=publicationFile</a>, for being the most relevant PPP model/standard contract available online, taking into account the case study assumptions.</p> <p>Other PPP contract standards are available for:</p> <p>b) Accommodation/social infrastructure: <a href="https://www.pd-g.de/unsere-beratungsangebote/grundlagenarbeit/standardisierung/oepp-mustervertrag-fuer-ein-inhabermodell-im-hochbau/">https://www.pd-g.de/unsere-beratungsangebote/grundlagenarbeit/standardisierung/oepp-mustervertrag-fuer-ein-inhabermodell-im-hochbau/</a></p> <p>c) Buildings: <a href="http://www.bbsr.bund.de/BBSR/DE/FP/AO/WohnenBauen/MoeglichkeitenGrenzenPppModelle/Downloads/Leitfaden5Inhabermodell.pdf?__blob=publicationFile&amp;v=2">http://www.bbsr.bund.de/BBSR/DE/FP/AO/WohnenBauen/MoeglichkeitenGrenzenPppModelle/Downloads/Leitfaden5Inhabermodell.pdf?__blob=publicationFile&amp;v=2</a></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>No regulatory basis</p>
<b>Participation of the members of the PPP contract management team in the PPP procurement</b>	<p>Yes</p>

<b>process and/or vice versa</b>	
<b>Relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<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>	Administrative instructions for the application of § 7 BHO and the related administrative regulations issued by the Conference of Finance Ministers.

<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>	<p>No</p>
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The PPP contract management team members are required to meet sufficient qualification without specific details.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>No regulatory basis</p>
<b>The PPP contract</b>	<p>No</p>

<b>management team members are not required to meet any specific qualifications.</b>	
<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>	<p>These are project-specific, part of the contractual agreement. For example, § 34 of the model contract for the availability model for PPP projects in the highway sector regulates supervision of the construction works.</p>
<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</b>	n/a

<b>available online?</b>	
<b>If yes, please specify the website:</b>	n/a
<b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Usually this is part of the contract. For example, § 26 of the model contract for the availability model for PPP projects in the highway sector regulates the monitoring and control rights of the client (the procuring authority). In particular, § 40 of the same standard document regulates the management information system, logging and reporting obligations and inspections.
<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>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	It depends on the concrete contractual design of the project. For example, § 45 of the model contract for the availability model for PPP projects in the highway sector states how the monthly fee is set, including the criteria to assess the availability of the infrastructure.
<b>The procuring or contract management authority can abate (reduce) payments for</b>	Yes

<b>non-performance of operating obligations under the PPP contract</b>	
<b>Relevant legal/regulatory provisions (if any)</b>	It depends on the concrete contractual design of the project. For example, § 45 of the model contract for the availability model for PPP projects in the highway sector states how the monthly fee is set, including the criteria to assess the availability of the infrastructure and how that affects and reduces the monthly payment.
<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>	It depends on the concrete contractual design of the project. For example, § 40.4 of the model contract for the availability model for PPP projects in the highway sector regulates the obligation of the contractor to periodically prepare and submit a report on the availability of infrastructure.
<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>	No regulatory basis
<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>	<p>No</p>
<b>If yes, please specify the website:</b>	<p>n/a</p>
<b>44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<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>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory</b>	<p>In general, according to § 132 GWB, material changes to a public contract during its term require a new procurement procedure. Changes are material if they result in the public contract differing substantially from the public contract originally awarded. A material change exists in particular where (...) 4. a new contractor replaces the contractor in cases other than</p>

<p><b>ry/standard contractual provisions (if any):</b></p>	<p>those provided for in paragraph 2 No. 4. Subsection (2) provides that notwithstanding paragraph 1, it is permissible to modify a public contract without conducting a new procurement procedure where [...] 4. a new contractor replaces the previous contractor a) based on a review clause within the meaning of No. 1; b) based on the fact that a different undertaking that meets the requirements originally set for eligibility replaces the original contractor, wholly or in part, following corporate restructuring through, for example, takeover, merger, acquisition or insolvency, provided that this does not entail further material modifications within the meaning of paragraph 1.</p> <p>The particular regulation of this aspect depends on the concrete contractual design of the project. For example, § 59 of the model contract for the availability model for PPP projects in highway sector regulates shareholder structure, domicile of the company, tax constructions.</p> <p>59.1 Shareholders of the Contractor and their general partners are the natural and legal persons designated in the company agreements attached in Appendix 3 and the attached shareholder lists. The Contractor undertakes to notify the client in writing without delay of any intended modification of the company form and / or of the shareholder structure, with the Contractor having to enclose all documents necessary for the assessment of the intended modification by the client. Any change in the company form and / or the shareholder structure leading to a change in the shares and / or the voting rights requires the express written consent of the client (procuring authority). Consent may only be refused for important reasons, in particular owing to the lack of credit standing of the partner or the non-submitting of declarations corresponding to those which were or are to be submitted by the original shareholders or members of the applicant group after the competition or tender documents. The above rules apply to changes at the holding company level.</p> <p>59.2 From the date of the conclusion of the contract, the Contractor shall undertake to exercise the rights and obligations incumbent on him under this Agreement as a company with administrative seat in the Federal Republic of Germany.</p>
<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>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>



<b>ry/standard contractual provisions (if any):</b>	
<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/standard contractual provisions (if any):</b>	<p>§ 132 GWB:  (1) Material changes to a public contract during its term require a new procurement procedure. Changes are material if they result in the public contract differing substantially from the public contract originally awarded. A material change exists in particular where (...) 4. a new contractor replaces the contractor in cases other than those provided for in paragraph 2 No. 4. (2) Notwithstanding paragraph 1, it is permissible to modify a public contract without conducting a new procurement procedure where 4. a new contractor replaces the previous contractor a) based on a review clause within the meaning of No. 1; b) based on the fact that a different undertaking that meets the requirements originally set for eligibility replaces the original contractor, wholly or in part, following corporate restructuring through, for example, takeover, merger, acquisition or insolvency, provided that this does not entail further material modifications within the meaning of paragraph 1.</p> <p>Also, the aforementioned § 59 of the model contract for the availability model for PPP projects in the highway sector states: Any change in the company form and / or the shareholder structure leading to a change in the shares and / or the voting rights requires the express written consent of the client (procuring authority). Consent may only be refused for important reasons, in particular owing to the lack of credit standing of the partner or the non-submitting of declarations corresponding to those which were or are to be submitted by the original shareholders or members of the applicant group after the competition or tender documents.</p>
<b>In other cases, flexibility to change the ownership structure and/or assign the contract.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard</b>	<p>Change of ownership is permitted under the stated conditions.</p>

<b>contractual provisions (if any):</b>	
<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/standard contractual provisions (if any):</b>	<p>§ 132 GWB provides that material changes during the contract term require a new procurement procedure (subject to certain exceptions, e.g. if the possibility of specific changes is provided in the original tender documents and such changes do not change the overall character of the services to be provided):</p> <p>(1) Material changes to a public contract during its term require a new procurement procedure. Changes are material if they result in the public contract differing substantially from the public contract originally awarded. A material change exists in particular where:</p> <ol style="list-style-type: none"> <li>1. the change introduces conditions which, if they had applied to the original procurement procedure,             <ol style="list-style-type: none"> <li>a) would have made it possible to admit other candidates or tenderers;</li> <li>b) would have made it possible to accept a different tender; or</li> <li>c) would have drawn the interest of further participants in the procurement procedure;</li> </ol> </li> <li>2. the modification shifts the economic balance of the public contract in favor of the contractor in a manner that was not provided in the initial contract;</li> <li>3. the modification significantly extends the scope of the public contract; or</li> <li>4. a new contractor replaces the contractor in cases other than those provided in paragraph 2 No. 4.</li> </ol>
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>

<b>ry/standard contractual provisions (if any):</b>	
<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>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>§ 132 GWB Material changes to a public contract during its term require a new procurement procedure. Changes are material if they result in the public contract differing substantially from the public contract originally awarded. A material change exists in particular where (...) 3. the modification significantly extends the scope of the public contract; (...) (2) Notwithstanding paragraph 1, it is permissible to modify a public contract without conducting a new procurement procedure where</p> <p>1. the initial procurement documents provide clear, precise and unequivocal review clauses or options which contain statements on the scope and nature of and requirements for possible contract modifications, and the overall nature of the contract is not altered by the modification; 2. additional supplies, works or services become necessary, which were not provided for in the initial procurement documents and a change in the contractor a) cannot be made for economic or technical reasons and</p> <p>b) would cause significant inconvenience or substantial duplication of costs for the public contracting authority; (...) In the cases referred in 2 and 3, the price may not be increased by more than 50% of the value of the original contract. Where there are several successive modifications of the contract, this limitation applies to the value of each individual modification, provided that the modifications were not made with the aim to circumvent the provisions of this Part. (3) It is also permissible to modify a public contract without conducting a new procurement procedure if the overall nature of the contract is not altered and the value of the modification, 1) does not exceed the respective thresholds under § 106, and 2) does not amount to more than 10% of the original contract value in the case of contracts for supplies and services and no more than 15% in the case of works contracts.</p>
<b>A change in the risk allocation of the contract.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual</b>	<p>No regulatory basis</p>

<b>provisions (if any):</b>	
<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>	<p>§ 132 GWB (1) Material changes to a public contract during its term require a new procurement procedure. Changes are material if they result in the public contract differing substantially from the public contract originally awarded. A material change exists in particular where (...) 3. 2. the modification shifts the economic balance of the public contract in favor of the contractor in a manner that was not provided for in the initial contract; (...) (2) Notwithstanding paragraph 1, it is permissible to modify a public contract without conducting a new procurement procedure where 1. the initial procurement documents provide clear, precise and unequivocal review clauses or options which contain statements on the scope and nature of and requirements for possible contract modifications, and the overall nature of the contract is not altered by the modification; 2. additional supplies, works or services become necessary, which were not provided for in the initial procurement documents and a change in the contractor a) cannot be made for economic or technical reasons and b) would cause significant inconvenience or substantial duplication of costs for the public contracting authority; (...) In the cases referred in 2 and 3, the price may not be increased by more than 50% of the value of the original contract. Where there are several successive modifications of the contract, this limitation applies to the value of each individual modification, provided that the modifications were not made with the aim to circumvent the provisions of this Part. (3) It is also permissible to modify a public contract without conducting a new procurement procedure if the overall nature of the contract is not altered and the value of the modification, 1) does not exceed the respective thresholds under § 106, and 2) does not amount to more than 10% of the original contract value in the case of contracts for supplies and services and no more than 15% in the case of works contracts.</p>
<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>	No regulatory basis
<b>A change in the agreed price or tariff.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual</b>	No regulatory basis

<b>provisions (if any):</b>	
<b>46.3. Can the procuring authority unilaterally modify a PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<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>	<p>It depends on the project and the specific contractual design. For example, § 27 of the model contract for the availability model for PPP projects in the highway sector:</p> <p>§ 27 Force majeure, third party 27.1 If, during the term of the contract, the object of the contract is damaged, destroyed or otherwise impaired in its entirety as a result of force majeure or a third party, the contractor shall be obliged to recover the contractually owed condition at his own expense for the use of security agencies, rescue operations and for traffic management measures, provided that the costs of restitution are covered by an insurance company whose contractor is obliged to complete the contract pursuant to section 55, the contractor would have completed the insurance and all obligations under the insurance contract. A deductible of the contractor agreed in the insurance contract shall be borne by the contractor.</p> <p>[...]</p>
<b>Material Adverse government action .</b>	Yes

<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>It depends on the project and the specific contractual design. For example, in the model contract for the availability model for PPP projects in the highway sector: § 46 regulates the execution of altered or additional services and § 47 regulates the settlement of unpredictable additional costs.</p>
<b>Change in the Law.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>§ 39 of the model contract for the availability model for PPP projects in the highway sector regulates the effect of subsequent modification of technical or legal standards.</p>
<b>Refinancing.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>For example, the model contract for the availability model for PPP projects in highway sector: § 43.6 regulates the participation of the client in refinancing profits.</p>
<b>Subcontracting and replacement of the subcontractors.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>§ 36 VgV regulates subcontracting in general: (1) The contracting authority may require undertakings in the contract notice or the tender documents to designate the parts of the contract which they intend to subcontract to third parties when submitting the contract and, where appropriate, the subcontractors. Before awarding the contract, the contracting authority may require the undertakings to nominate subcontractors and provide evidence that the necessary resources of those subcontractors are available to them. If an applicant or tenderer intends to award part of the contract to a third party by subcontracting, and refers to the capacities of this third party, §§ 45 and 46, § 47 shall also apply.</p> <p>2. Paragraph 1 shall not affect the liability of the principal contractor to the contracting authority. (3) In the case of the award of service contracts to be carried out by the contracting authority under a direct supervision, the contracting authority shall require the contractor to provide the names, contact details and legal representatives of its subcontractors no later than the start of the contract, and that any change in the performance of the contract must be notified at the subcontractor level. The contracting authority may also provide the notification obligations pursuant to sentence 1 as contract terms for the award of other service contracts or for the award of delivery orders. Furthermore, notification obligations may also be applied to suppliers involved in service contracts, (4) For subcontractors of all levels, Section 128 (1) of the Act applies against competition restrictions. (5) The contracting authority shall review the</p>

	grounds for the exclusion of the subcontractor before awarding the contract. In the event of mandatory exclusion, the contracting authority shall require the substitution of the subcontractor. In the case of optional grounds for exclusion, the contracting authority may require that this be replaced. The contracting authority may set a deadline for candidate or tenderer.
<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/standard contractual provisions (if any):</b>	The contractual parties can bring proceedings to the ordinary courts pursuant to the general civil procedure law. However, PPP contracts often contain clauses for an alternative dispute resolution mechanism. For example, the model contract for the availability model for PPP projects in the highway sector: § 56 regulates conciliation proceedings.
<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>	PPP contracts often contain clauses for an alternative dispute resolution mechanism. For example, the model contract for the availability model for PPP projects in the highway sector: § 56 regulating conciliation proceedings; § 64 jurisdiction agreements. The agreements may also lead to the introduction of 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>	Section 1060 and following of the Code of Civil Procedure.
<b>International arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	Section 1061 of the Code of Civil Procedure and International Conventions (New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; National Arbitration: § 1062 ff. ZPO), as applicable.
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/</b>	Section 1061 of the Code of Civil Procedure and International Conventions (New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; National Arbitration: § 1062 ff. ZPO), as applicable. Germany is also a signatory state of the ICSID Convention



<b>regulatory provisions/standard contractual provisions (if any):</b>	
<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>	<p>No</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</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</b>	<p>Yes</p>

<b>termination for failure to meet service obligations?</b>	
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>In general, this depends on the contractual design of the individual project. For example, the model contract for the availability model for PPP projects in the highway sector: § 6 (Eintrittsrechte) regulates the direct agreement between contracting authority, project company and funders (annex 4 to the model contract); § 132 para. 2 No. 4 b GWB applies (that permits a new contractor to take over in cases of insolvency etc.).</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>No</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	<p>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual</b>	<p>The model contract for the availability model for PPP projects in the highway sector: § 6 (Eintrittsrechte) regulates the direct agreement between contracting authority, project company and funders (annex 4 to the model contract).</p>

<b>provisions (if any):</b>	
<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>	No
<b>Please Specify:</b>	n/a
<b>51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>§ 133 GWB: Termination of Public Contracts in Special Cases (1) Notwithstanding § 135, public contracting authorities may terminate a public contract during its term where</p> <ol style="list-style-type: none"> <li>1. a material modification was made, which would have required a new procurement procedure under § 132;</li> <li>2. at the time of contract award, a mandatory ground for exclusion existed under § 123(1) through (4) or</li> <li>3. the public contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaty on the Functioning of the European Union or under the provisions of this Part that has been established by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU. (...)</li> </ol> <p>Additionally contractual regulations, for example model contract for the availability model for PPP projects in the highway sector: § 50 Termination Rights, § 51 Termination by the Customer; § 52 Termination by the Contractor; § 53 General Arrangements for Termination of the Contract; § 54 Legal Consequences of Termination.</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>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>§ 133 GWB: Termination of Public Contracts in Special Cases (...) (2) If a public contract is terminated pursuant to paragraph 1, the contractor may demand a corresponding part of the remuneration for its previous efforts. In the case of paragraph 1 No. 2, the contractor is not entitled to remuneration to the extent that its previous efforts are of no interest to the public contracting authority as a result of the termination.  (3) The right to demand damages is not excluded by the termination.  Additional contractual regulations, for example model contract for the availability model for PPP projects in the highway sector: § 54 regulates the legal consequences of termination.</p>
<b>Unsolicited Proposals</b>	
<b>34. Are unsolicited proposals in Germany: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)</b>	<p>Yes</p>
<b>Explicitly allowed by the legal framework?</b>	<p>No</p>
<b>Not regulated by the legal framework, but do happen in practice?</b>	<p>No</p>
<b>Not regulated by the legal framework, and do not</b>	<p>No</p>

<b>happen in practice? (if not done in practice, skip to section F)</b>	
<b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</b>	<p>§ 119 (1) Act Against Restraints of Competition, § 3 VOB/A-EU limit procurement procedures to the listed procedures do not mention unsolicited proposals.</p>
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	<p>n/a</p>
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any</b>	<p>n/a</p>
<b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b>	<p>n/a</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>

<p><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></p>	<p>n/a</p>
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b></p>	<p>n/a</p>
<p><b>If yes, please provide the</b></p>	<p>n/a</p>

<b>relevant legal/regulatory provisions (if any):</b>	
<b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b>	n/a
<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>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	n/a
<b>If yes, please provide the</b>	n/a

<b>relevant legal/regulatory provisions (if any):</b>	
<b>and the time in calendar days:</b>	n/a
<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>	n/a
<b>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</b>	n/a
<b>39.3 Bid Bonus.</b>	n/a
<b>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</b>	n/a
<b>39.5 Other.</b>	n/a





<b>Please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a