

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

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>Ghana is currently preparing a standalone PPP law that is expected to provide the legislative framework for regulating PPPs in Ghana. The PPP Law is expected to be passed by the end of 2017. The passage of the PPP law would bring together the key components of the PPP regulatory framework which are currently scattered in existing laws, regulations, policies, guidelines and administrative procedures. In the interim, the National Policy on PPP adopted in June 2011 guides the development, implementation and regulation of PPP projects in Ghana.</p> <p>Until then, procuring PPPs is allowed under the National Policy on Public Private Partnerships in Ghana adopted in June 2011 (the “PPP Policy”). The PPP Policy sets out some guidelines for the interim regulation of PPPs pending the enactment of Ghana Public-Private Partnership Bill. However, to some extent, the PPP Policy is not an act of parliament. It is not binding and enforceable. That notwithstanding it is the policy that guides PPP’s and to be followed by the MDA’s when procuring PPPs. PPPs are new in Ghana and in that regard, the provisions of the national policy have not been largely implemented. The National Policy on PPPs was adopted pursuant to the constitutional foundation for PPPs in Ghana as expressed in Article 36(2)(b) and (c) of the 1992 Constitution of Ghana, which in essence states that the State should create an enabling economic environment for the private sector to thrive and reads as follows: “The State is to take all necessary steps to establish a sound and healthy economy whose underlying principles shall include: (a) affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy; (b) ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country”. The PPP Policy is complemented with the Ministry of Finance and Economic Planning PPP Toolkit for Unsolicited Proposals, December 2012 (the “PPP Toolkit for Unsolicited Proposals”).</p> <p>Another important legislation that currently supports the regulation of PPPs is the Public Procurement Act 2003 - Act 663, as well as the Public Procurement Amendment Act 2016 (Act 914) - (hereinafter the “Public Procurement Act”). The application of the Public Procurement Act is expressly mentioned in the PPP Policy that reads as follows: “The procurement procedure (...) must ensure that PPP activities are within the scope of the public procurement act shall be undertaken under the Public Procurement Act”. Finally, there are sector specific laws that enable procuring PPPs within different sectors e.g. Section 3(1)(k) of the Ghana Highway Authority Act, 1997 (Act 540) empowers Ghana Highway Authority to procure PPPs for projects pertaining to the road transport, construction and tolling.</p>
<b>and provide a link to a government–</b>	(1) The National Policy on PPP of 2011: <a href="http://www.mofep.gov.gh/sites/default/files/docs/pid/National%20Policy%20on%20Pub">http://www.mofep.gov.gh/sites/default/files/docs/pid/National%20Policy%20on%20Pub</a>

<b>supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</b>	<p>lic%20Private%20Partnership.pdf(2) The Public Procurement Act of 2003: <a href="http://www.ppaghana.org/documents/Public%20Procurement%20Act%202003%20Act%20663.pdf">http://www.ppaghana.org/documents/Public%20Procurement%20Act%202003%20Act%20663.pdf</a> (3) Ghana PPP Draft Bill: <a href="http://www.mofep.gov.gh/sites/default/files/docs/pid/PPP_Law_Draft%20.pdf">http://www.mofep.gov.gh/sites/default/files/docs/pid/PPP_Law_Draft%20.pdf</a>(4) The PPP Toolkit for Unsolicited Proposals of 2012: <a href="http://www.mofep.gov.gh/sites/default/files/docs/pid/assessing_unsolicited_proposals.pdf">http://www.mofep.gov.gh/sites/default/files/docs/pid/assessing_unsolicited_proposals.pdf</a></p>
<b>2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</b>	<p>No</p>
<b>Please describe:</b>	<p>n/a</p>
<b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b>	<p>Yes</p>
<b>Please describe:</b>	<p>In March 2016, the Government of Ghana launched the New PPP Bill intending to speed up the delivery of public infrastructure and related services. In July 2016, the Bill went through its second reading granting it safe passage into the consideration stage for the discussion and approval of proposed amendments by Parliament. The Draft PPP Law was supposed to be passed in October 2016, but it did not pass before the Parliament was dissolved on January 6, 2017. Therefore, a new legislative process is needed, and the Draft Law is now scheduled to be submitted to the Cabinet before the end of FY17, and the Bill is expected to be passed into Law by the Parliament before the year 2017 ends.</p>
<b>3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</b>	<p>No</p>
<b>If yes, please provide the relevant</b>	<p>n/a</p>

<b>legal/regulatory provisions:</b>	
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.</b>	No
<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</b>	No

<b>matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other</b>	
<b>If yes, specify and provide the relevant legal/regulatory provisions:</b>	n/a
<b>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provision (if any):</b>	n/a
<b>5. Please identify the PPP procuring authorities in Ghana and provide their website(s) (if available):</b>	<p>The PPP procuring authorities in Ghana are the Ministries, Department &amp; Agencies (MDAs); Metropolitan, Municipal &amp; District Assemblies (MMDAs), in consultation with the various departments of the Ministry of Finance such as the Public Investment Division. The PPP Policy reads on this respect “The implementing entities shall be the implementing Contracting Authorities under GoG. MDAs, MMDAs and other contracting entities shall be required to develop capability in PPP development with support from PAU. Where appropriate, contracting authorities, especially sector Ministries shall be encouraged to set up Project Management Units (PMUs) , particularly, to assist in the project identification, needs and options analysis, initial definition of PPP concept and PPP Contract Management, Monitoring, Reporting and Evaluation.”Website: <a href="http://www.mofep.gov.gh">www.mofep.gov.gh</a></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,</b>	<p>1) Under the National Policy on PPP, the Public Investment Division (PID) of the Ministry of Finance (MoF) (<a href="http://www.mofep.gov.gh">www.mofep.gov.gh</a>) is mandated to spearhead the development of PPP. The PID is also responsible for developing the legal, institutional, and regulatory</p>

<b>and its website (if available):</b>	<p>framework for the PPP program in Ghana. The key units within the PID that essentially facilitate PPP project preparation and also undertake appraisal and serve as gatekeepers to ensure value for money are the (i) PPP Project Advisory Unit and (ii) the Project and Financial Analysis Unit respectively.</p> <p>The Public Investment Division is responsible for developing the legal, institutional and regulatory framework for the PPP programme.</p> <p>The PPP Advisory Unit provides advice to the various contracting authorities in the Public Sector to enhance the identification, preparation of feasibility analysis, structuring, negotiations and procurement of PPP projects.</p> <p>The Project and Financial Analysis Unit is charged with the responsibility to screen projects to ensure consistency with the National Infrastructure Plan; review and ensure that the use of PPP option is preferable and beneficial relative to other options including direct public investment. In general, the Ministry of Finance is responsible for the issuing of Standardized PPP provisions and PPP Manual/Guidelines for the effective management of PPP Projects. (<a href="http://www.mofep.gov.gh/divisions/pid">http://www.mofep.gov.gh/divisions/pid</a>) (2) In addition to the PID, there are other Divisions within the Ministry of Finance that are mandated to play key roles in the PPP arrangement. These include: (i) the Debt Management Division (that ensures fiscal sustainability for PPP projects), (ii) the Budget Division (in charge of incorporating PPP projects into the annual budgeting exercise: <a href="http://www.gipcghana.com">http://www.gipcghana.com</a>, (iii) the Legal Division that also have some responsibilities over PPP as indicated by the National Policy on PPPs. (<a href="http://www.mofep.gov.gh/sites/default/files/docs/pid/PPP_Law_Draft%20.pdf">http://www.mofep.gov.gh/sites/default/files/docs/pid/PPP_Law_Draft%20.pdf</a>).</p>
<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	<p>Yes</p>
<b>6.2 PPP capacity building for other public authorities.</b>	<p>Yes</p>
<b>6.3 PPP promotion among the public and/or private sectors in national and international forums.</b>	<p>Yes</p>
<b>6.4 Technical support in implementing PPP projects.</b>	<p>Yes</p>
<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	<p>Yes</p>
<b>6.6 Revision of fiscal risks born by the Government.</b>	<p>No</p>

<b>6.7 Consultation with affected communities on potential impact of PPP projects.</b>	No
<b>6.8 Approval of PPP projects.</b>	Yes
<b>6.9 Undertaking the procurement of PPPs.</b>	No
<b>6.10 Oversight of PPP implementation.</b>	Yes
<b>6.11 Other</b>	No
<b>6.11 please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions:</b>	<p>Section 26 of the National Policy on Public Private Partnership provides that the Public and Financial Analysis Unit (a unit within the Ministry of Finance) is responsible for building capacity among public sector stakeholders, and the Ministry, Departments and Agencies (MDAs), to enable them to lead the implementation of a PPP project from Start to finish in a professional and technically competent manner.</p> <p>This section also provides that the Public and Financial Analysis Unit is responsible for promoting awareness and understanding of Ghana’s PPP programme in order to encourage the use of PPP for selected appropriate projects.</p> <p>The same section also states that the Public and Financial Analysis Unit is responsible for providing assistance to MDAs and other contracting Authorities that want to promote PPPs in their respective sectors and developing in collaboration with the PFA Unit, Model Agreements for that sector. Also, the PPP Advisory Unit is responsible for providing value Added Services and Supports to the MDAs and other contracting Authorities in the public sector to enhance the identification, preparation of feasibility analysis, structuring, negotiation and procurement of PPP projects.</p> <p>Furthermore, Section 25 of the National Policy on Public Private Partnership provides for the PAU as the entity which shall promote the flow of bankable, viable and sustainable PPP projects and further the National Policy.</p> <p>Section 37 provides that, where appropriate, contracting authorities, especially sector Ministries shall be encouraged to set up Project Management Units (PMUs) , particularly to assist in the project identification, needs and options analysis, initial definition of PPP concept and PPP Contract Management, Monitoring, Reporting and Evaluation.”</p> <p>Additionally, Section 29 of National Policy on Public Private Partnership provides that the PPP Approval Committee shall be established for the purpose of considering requests by contracting entities to undertake PPPs and shall be the approving authority for PPPs, subject to the provisions of the approval schedules to the PPP policy and detailed regulations to be promulgated.</p> <p>Finally, Section 24 of the National Policy on Public Private Partnership provides that the Public Finance unit shall oversee the management and compliance of PPP Agreements/ Concessions.</p>

PPP Preparation	
<b>8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The National Policy on Public Private Partnership requires the Ministry of Finance and Economic Planning to give its approval at the following stages: 1. The Approval of pre-feasibility and project viability. 2. Review and approval of full feasibility report. 3. Review of project documentation, draft PPP Agreement/Concession. 4. Review and recommendation of evaluation report. (See the Approval Schedule and paragraphs 47, 48, 49, 52, 54 and 61 of the National Policy on Public Private Partnership, June 2011.)
<b>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	The National Policy on PPP (Key Institutions Part C) has clearly stipulated the approval processes of PPP projects. In addition, the National Policy on PPP contains a clearly defined Approval Schedule for PPP projects. The Approval Authority for PPP project depending on the threshold comprise: the PPP Approval Committee, the Cabinet and the Parliament (The Approval Schedule and paragraphs 54 and 63 of the National Policy on Public Private Partnership, June 2011.)
<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of Budgeting for PPP projects.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	No
<b>If yes, please provide the relevant</b>	n/a

<b>legal/regulatory provisions (if any):</b>	
<b>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).</b>	No
<b>Accounting and reporting according to other international standard (e.g. European System of Accounts).</b>	No
<b>Please specify:</b>	n/a
<b>Other.</b>	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>	Yes

<b>If yes, please specify the relevant authority</b>	Project Management Units of Ministries, Departments and Agencies or the appropriate authority and a concurrent review by the Public Investment Division of the Ministry of Finance and Economic Planning of the pre-feasibility study. (The National Policy on PPP considers this as approval: pre-Feasibility of the PPP process.)
<b>and provide the relevant legal/regulatory provisions (if any):</b>	The Approval Schedule and paragraphs 47, 48, 49, 50, and 53 of the National Policy on Public Private Partnership, June 2011. Approval to procure PPP needed from the following authority: The PPP Approval Committee shall approve the feasibility study, when the PPP involves projects with estimated project costs of up to Fifty Million Ghana Cedis (GHS50,000,000) but exceeds Two Million Ghana Cedis (GHS2,000,000). If the PPP involves projects with estimated project costs of above Fifty Million Ghana Cedis (GHS50,000,000), Cabinet shall approve the feasibility study based on recommendation from the PPP Approval Committee. When the PPP involves projects with estimated project costs of Two Million Ghana Cedis (GHS2,000,000) and below, the Public Investment Division of the Ministry of Finance and Economic Planning shall approve the feasibility study. As a consequence, for a PPP project with an estimated cost of US \$ 150 million the approval authority will be the Cabinet. The National Policy on PPP divides this approval into: Feasibility-Approval II, Procurement - Approval IIIA and IIIB. (See the Approval Schedule and paragraph 50 to 57 of the National Policy on Public Private Partnership.)
<b>9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Approval to enter into PPP Contract: The Approving Authority - Approval Committee/Cabinet/Parliament/Metropolitan, Municipal and District Assemblies (as required on the previous approval). (The Approval Schedule and paragraphs 57 and 59 of the National Policy on PPP. Section 59 provides that: "After the procurement process has been concluded but before the Contracting Authority concludes a PPP Agreement/Concession, the Contracting Authority must obtain approval from the Approving Authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated". The Approval authority could be the PPP Approval Committee, Cabinet or Parliament depending on the threshold. The National Policy on PPP considers this Contracting PPP Agreements/Concessions - Approval IV. )
<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	Yes
<b>If yes, please provide the relevant</b>	Section 44 of the National Policy on PPPs provides that MDAs and Contracting Authorities (assisted by PAU/ and/or qualified and experienced transaction advisors as

<b>legal/regulatory provisions (if any):</b>	appropriate) shall ensure that PPPs are carried out rigorously.
<b>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	The Public Investment Management Policy requires the development of a Public Investment Program (PIP) which covers all priority projects ( <a href="https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/12/20/Presentation1.pdf">https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/12/20/Presentation1.pdf</a> ). The policy objective is that PPP projects shall be selected from sectors that have been identified as within the National Infrastructure Plan (NIP) and that have the potential for development under PPP. Therefore, the Contracting authority must undertake a pre-feasibility study that makes a business case in terms of demonstrating the alignment of the project with the NIP and government policy (Paragraph 46 of the National Policy on Public Private Partnerships). The PPP Advisory Unit (PAU) provides technical expertise to support the relevant line Ministries, Departments and Agencies (MDAs) in the development and

	management of prospective PPP transactions that satisfy Government of Ghana Public Investment Priorities. It is from the PIP that projects will be selected for development based on PPP or other forms of financing.
<b>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other 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 accordance with the provisions of the regulatory</b>	No

<b>framework described above?</b>	
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	Too early to assess given that the operationalization of the PIM policy and the development of the PIP is starting this year (2017). Also, in extraordinary situations, the government prioritizes other actions such as natural disasters, drought, floods, plagues in agriculture, etc.
<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>	The National Policy on PPPs paragraph 50 requires socio-economic analysis to be done in accordance with the Terms of Reference for the assignment.
<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>	In practice, the socio-economic assessment is done in practice in Ghana.
<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>	Paragraph 27 of the National Policy on PPPs, p.9 deals with the issue of “fiscal sustainability” for PPP projects and refers to consideration of both direct and contingent liabilities, including guarantees, arising from PPP projects. Additionally, under par. 46, 50, 57 and 59, affordability remains a requirement in the context of all pre-feasibility,

	feasibility studies, procurement and contracting forming part of the relevant approvals (Approval I-IV).
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	For the affordability assessment, the methodologies are different depending on whether the project is user-pays or government-pays. For user pays projects, the methodology includes: willing-to-pay analysis, demand forecast etc. In government-pays, the methodology used consists of financial analysis (NPV, IRR, discounted cash flow analysis etc.) to assess financial impact on Government.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	The affordability 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>	Risk allocation is required and the National Policy on PPPs refers to it in par. 12 and 13 under guiding principles; in the context of a “Risk Sharing and Management Framework” par. 41- 42, p. 11, as part of the feasibility study and lastly, in par. 57 and 59 as part of the approvals relative to procurement and contracting.
<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>	The risk identification allocation and assessment is done in practice in Ghana.
<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>	Par. 12 of the National Policy on PPPs refers to “value for money” as a guiding principle. Additionally, under par. 50 and 57, PPPs are being assessed against the same “value for money” requirement as part of both feasibility studies and procurement (approvals II and III).
<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>	When identifying and preparing PPP projects, the procuring authority does a comparative assessment in practice in order to evaluate whether a PPP is the best option when compared to other procurement alternatives
<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>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	A financial viability or bankability assessment is always done in practice in Ghana when identifying and preparing a PPP project
<b>12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	A market sounding and assessment is always done in practice when identifying and preparing a PPP project in practice in Ghana.
<b>12.7. Environmental impact assessment</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a

<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b>	n/a
<b>13.1. Are the assessments published online?</b>	No
<b>If yes, please provide the</b>	n/a

<b>relevant legal/regulatory provisions (if any):</b>	
<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>	Section 54 of the National Policy on PPPs provides that prior to the issuing of any procurement documentation for a PPP to any prospective bidders, the contracting authority must obtain approval from the MOFED-PID for the documentation, including the draft PPP Agreement/Concession.
<b>If no, please elaborate</b>	n/a
<b>14.1. Are the tender documents published online?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>and please specify the website:</b>	<a href="https://www.ppaghana.org">https://www.ppaghana.org</a>
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	No
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	n/a
<b>16.1 In a case comparable to the</b>	No

<b>case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)</b>	
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the</b>	Yes

<b>procuring authority (or other Government entity)</b>	
<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>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>16.5. Obtaining the required right of way: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>PPP Procurement</b>	
<b>18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please</b>	Yes

<b>select only one): The membership of the bid evaluation committee is 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>	<p>Schedule 17 of the Public Procurement Act provides that the tender committee should be composed of the following members: (a) head of finance or head of accounts division; (b) a representative of the Ministry of Justice not below Chief State Attorney; (c) three other heads of division or department, one of whom represents a user department or division; (d) two members of Parliament from the region, one appointed by the Minister and the other chosen by the Regional Caucus of Members of Parliament.</p>
<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The bid evaluation committee members are not required to have any specific qualifications.</b>	<p>No</p>
<b>Please elaborate and provide examples:</b>	<p>n/a</p>
<b>19. Does the procuring authority issue a public procurement notice of the PPP project?</b>	<p>Yes</p>
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 3 of the Public Procurement Act provides that the Board shall publish a monthly Public Procurement Bulletin which shall contain information germane to public procurement, including proposed procurement notices, notices of invitation to tender and contract award. Section 21(4) of the Public Procurement Act provides that the procurement entity shall send to the Tender Review Board, procurement notices for contracts and procurement plans above the thresholds stipulated in Schedule 3 for publication in the Public Procurement Bulletin.</p>
<b>19.1. If yes, is the public procurement</b>	<p>Yes</p>

<b>notice published online?</b>	
<b>If yes, please specify the website:</b>	www.ppaghana.org
<b>20. Are foreign companies prohibited from participating in the bidding process?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Section 53(1)(b) of the Public Procurement Act provides that the procurement entity shall allow tenderers at least six weeks to prepare their tenders for international competitive tendering.
<b>and the time in calendar days:</b>	43
<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:</b>	Yes
<b>Available</b>	
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Section 45 of the Public Procuring Act provides that (1) International competitive tendering shall be used whenever open competitive tendering is used and effective competition cannot be obtained unless foreign firms are invited to tender. Additionally, Section 10(f) of the National Policy on PPPs provides that an objective of the PPP Policy is to set up efficient and transparent institutional arrangements for the identification, structuring and competitive tendering of PPP Projects.

<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Section 23 of the Public Procurement Act provides that: (1) A procurement entity may engage in prequalification proceedings to identify tenderers who are qualified prior to the submission of tenders.</p> <p>Additionally, Section 38 of the Public Procurement Act provides that: A procurement entity may for reasons of economy and efficiency and subject to the approval of the Board engage in procurement by means of restricted tendering.</p> <p>(a) if goods, works or services are available only from a limited number of suppliers or contractors; or</p> <p>(b) if the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured.</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>Section 36 of the Public Procurement Act provides that: (1) A procurement entity shall engage in procurement by two-stage tendering</p> <p>(a) where it is not feasible for the procurement entity to formulate detailed specifications for the goods or works or, in the case of services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs; or where the character of the goods or works are subject to rapid technological advances;</p> <p>(b) where the procurement entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs.</p>
<b>22.4. Competitive dialogue: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.5. Direct negotiation with more than one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a

<b>22.6. Direct negotiation with only one candidate: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Section 40 of the Public Procurement Act provides that: (1) A procurement entity may engage in single-source procurement under section 41 with the approval of the Board,</p> <p>(a) where goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;</p> <p>(b) where there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procurement entity;</p> <p>(c) where owing to a catastrophic event, there is an urgent need for the goods, works or technical services, making it impractical to use other methods of procurement because of the time involved in using those methods;</p> <p>(d) where a procurement entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that (i) additional supplies need to be procured from that supplier or contractor because of standardization; (ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity; (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;</p> <p>(e) where the procurement entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or</p> <p>(f) where the procurement entity applies this Act for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.</p> <p>(2) A procurement entity may engage in single-source procurement with the approval of the Board after public notice and time for comment where procurement from a particular supplier or contractor is necessary in order to promote a policy specified in section 59(4)(c), (d) or 69(2)(c)(i), and procurement from another supplier or contractor cannot promote that policy.</p>
<b>22.7 Other. Specify:</b>	No
<b>Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.8. Do the tender documents detail the procedure of the procurement process providing the same</b>	Yes

<b>information to all the bidders?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Section 50 of the Public Procurement Act provides that: (3) The invitation documents shall include, (a) instructions for preparing tenders; (b) the criteria and procedures, in conformity with the provisions of Section 22, for the evaluation of the qualifications of suppliers or contractors; (c) the requirements on additional documentary evidence or other information that is to be submitted by suppliers or contractors to demonstrate their qualifications;
<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>	Section 23(3) of the Public Procurement Act provides that a procurement entity shall supply a set of prequalification documents to each supplier or contractor that requests them (for a price reflecting the cost of printing and provision to suppliers or contractors); and Section 23(4) details the provisions that the prequalification documents shall include. Furthermore, Section 24(1) provides that the procurement entity shall make a decision with respect to the qualification of each supplier or contractor submitting an application to prequalify and in reaching that decision shall apply only the criteria set out in the prequalification documents and 24(1) of the Public Procurement Act.
<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>	In practice, the prequalification/shortlisting criteria specified in the tender documents are always respected in Ghana.
<b>If no, please elaborate:</b>	n/a
<b>23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes
<b>If yes, please provide the</b>	Section 51 of the Public Procurement Act, 2003, Act 663, enables suppliers or contractors to promptly request clarification on the tender documents from the

<b>relevant legal/regulatory provisions (if any):</b>	<p>procurement entity and the procurement entity shall respond to a request by a supplier or contractor within a reasonable time before the deadline for the submission of tenders to enable the supplier or contractor make a timely submission of its tender.</p> <p>Furthermore, Section 51(5) of Act 663 adds that the procurement entity may convene a meeting of suppliers and contractors to clarify and modify tender documents.</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>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to section 51(2) of the Public Procurement Act, the procurement entity communicates clarifications to the suppliers or contractors provided with the invitation documents (without disclosing the source of the original request). Additionally, Section 51(5) provides that the procurement entity shall prepare minutes of any previous meeting concerned with clarification of the invitation documents without identifying the sources of the requests.</p>
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	<p>Yes</p>
<b>If yes, please specify:</b>	<p>In practice, the procurement entity communicates clarifications to all potential bidders through letters.</p>
<b>If no, please elaborate:</b>	<p>n/a</p>
<b>24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?</b>	<p>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Section 51 of the Public Procurement Act, the procurement entity may convene a meeting of suppliers and contractors to clarify and modify tender documents and shall prepare minutes of any previous meeting concerned with clarification of the invitation documents without identifying the sources of the requests.</p>
<b>24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority</b>	<p>Yes</p>

<b>disclose the content and the results of the pre-bid conference to all bidders?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Section 51 of the Public Procurement Act, the procurement entity shall prepare minutes of any previous meetings concerned with clarification of the invitation documents, without identifying the sources of the requests, to take the minutes into account in the preparation of their tenders.
<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	In the majority of the complex projects in Ghana's, a pre-bidding conference is held and the necessary clarifications are provided. An example is the pre-bidding conference concerning the Electricity Company of Ghana Concession Programme.
<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>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate:</b>	Even though bids are expected to demonstrate certain financial criteria, no specific requests for financial models are made in the Public Procurement Act 2003 or the National Policy on PPP.
<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</b>	Section 59 provide that (1) the procurement entity shall evaluate and compare the tenders that have been accepted in order to ascertain the successful tender in

<b>relevant legal/regulatory provisions (if any):</b>	<p>accordance with the procedures and criteria set out in the invitation documents. (2) No criterion that has not been set out in the invitation documents shall be used. Furthermore, Section 74 of the draft bill provides that “each responsive proposal shall be evaluated in accordance with the evaluation criteria outlined in the solicitation documents and the provisions of this Act”.</p>
<b>Evaluation criteria is not set in the tender documents</b>	<p>No</p>
<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>	<p>No</p>
<b>Please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	<p>No</p>
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The procuring authority does not award a PPP contract if only one proposal is submitted.</b>	<p>No</p>
<b>Please provide the relevant</b>	<p>n/a</p>

<b>legal/regulatory provisions (if any):</b>	
<b>The regulatory framework does not include any provisions.</b>	Yes
<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>	Section 65(9)(c) of the Public Procurement Act explicitly provides that all contracts above the threshold in Schedule 3, must be published in the Procurement Bulletin which shall disclose the names of firms or individuals awarded contracts, the start and completion dates, as well as the value of the contracts.
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.ppaghana.org">www.ppaghana.org</a>
<b>29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Section 65(9) provides that the procurement entity shall give notice of the procurement contract in writing to unsuccessful suppliers and contractors.
<b>If no, please elaborate:</b>	n/a
<b>29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>30. Is there a standstill (or pause)</b>	No

<b>period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	n/a
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	No
<b>If yes, please specify:</b>	n/a

<b>If no, please elaborate:</b>	The regulatory framework in Ghana does not restrict negotiations with the selected bidder between the award and the signature of the PPP contract, and such negotiations are not restricted in practice neither.
<b>32. Does the procuring authority publish the PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<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>	n/a
<b>Publication of the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract without publishing the full PPP contract</b>	n/a
<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

If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
<b>PPP Contract Management</b>	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 66 of the National Policy on Public Procurement provides that: A contracting authority that is party to a PPP Agreement/Concession is responsible for ensuring that the PPP Agreement/Concession is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures.
41.1. If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team	Yes
Relevant legal/regulatory provisions (if any):	Section 37 of the National Policy on Public Procurement provides that, where appropriate, contracting authorities, especially sector Ministries shall be encouraged to set up Project Management Units (PMUs), particularly to assist in the project identification, needs and options analysis, initial definition of PPP concept and PPP Contract Management, Monitoring, Reporting and Evaluation. Furthermore, Section 8 of the National Policy on Public Investment Management also provides the responsibilities of the contract management team.

<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<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>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>41.2. Which of the following options best describes the required qualifications of the PPP contract management team</b>	No

<b>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>	
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The PPP contract management team members are required to meet sufficient qualification without specific details.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>The PPP contract management team members are not required to meet any specific qualifications.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?</b>	Yes
<b>If yes, please provide the relevant</b>	Section 66 of the National Policy on PPP, 66 provides that: "A contracting authority is responsible for ensuring that the PPP Agreement/Concession is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures for:

<b>legal/regulatory provisions (if any):</b>	<p>Measuring the outputs of the PPP Agreement/Concession;  Monitoring the implementation of the PPP Agreement/Concession and performances under the PPP Agreement/Concession;  Liaising with the private party;  Resolving disputes and differences with the private party;  Generally overseeing the day-to-day management of the PPP Agreement/Concession;  and  Reporting on the PPP Agreement in the Contracting Authority’s Annual Report.</p> <p>Additionally, Section 37 of the National Policy on Public Private Partnerships provides that: “Where appropriate, contracting authorities, especially sector Ministries shall be encouraged to set up Project Management Units (PMUs), particularly to assist in the project identification, needs and options analysis, initial definition of PPP concept and PPP Contract Management, Monitoring, Reporting and Evaluation”.</p>
<b>42.1. If yes, is the PPP contract construction performance information made available to the public?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 66 of the National Policy on PPP provides that: “A contracting authority is responsible for ensuring that the PPP Agreement/Concession is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures for reporting on the PPP Agreement in the Contracting Authority’s Annual Report.</p>
<b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b>	<p>No</p>
<b>If yes, please specify the website:</b>	<p>n/a</p>
<b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 37 of the National Policy on Public Private Partnerships provides that the implementing entities shall be the implementing contracting authorities under GoG. MDAs, MMDAs and other contracting entities shall be required to develop capability in PPP development with support from PAU. They are responsible for the following: project identification, needs and options analysis, initial definition of PPP concept and PPP</p>

	<p>Contract Management, Monitoring, Reporting and Evaluation (Assistance of Project Management Units (PMUs) can be used where necessary). Furthermore, Section 66 of the National Policy on PPPs establishes the following monitoring and evaluation system of the PPP contracts in Ghana: A contracting authority that is party to a PPP Agreement/Concession is responsible for ensuring that the PPP Agreement/Concession is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in approval IV for -Measuring the outputs of the PPP Agreement/Concession; Monitoring the implementation of the PPP Agreement/Concession and performances under the PPP Agreement/Concession; Liaising with the private party; Resolving disputes and differences with the private party; Generally overseeing the day-to-day management of the PPP Agreement/Concession; and Reporting on the PPP Agreement in the Contracting Authority's Annual Report.</p>
<p><b>43.1. If yes, which of the following tools does it include (check all that apply)?:</b>  <b>Performance is assessed against evaluation criteria set in the tender documents and the PPP contract</b></p>	<p>No</p>
<p><b>Relevant legal/regulatory provisions (if any)</b></p>	<p>n/a</p>
<p><b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b></p>	<p>No</p>
<p><b>Relevant legal/regulatory provisions (if any)</b></p>	<p>n/a</p>
<p><b>The private partner must provide the procuring or contract management authority with periodic operational and financial data</b></p>	<p>No</p>
<p><b>Relevant legal/regulatory provisions (if any)</b></p>	<p>n/a</p>

<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract</b>	<p>Yes</p>
<b>Relevant legal/regulatory provisions (if any)</b>	<p>Section 66 of the National Policy on PPPs provides that: A Contracting Authority that is party to a PPP Agreement/Concession is responsible for ensuring that the PPP Agreement/Concession is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in approval IV for:</p> <ul style="list-style-type: none"> <li>Measuring the outputs of the PPP Agreement/Concession;</li> <li>Monitoring the implementation of the PPP Agreement/Concession and performances under the PPP Agreement/Concession;</li> <li>Liaising with the private party;</li> <li>Resolving disputes and differences with the private party;</li> <li>Generally overseeing the day-to-day management of the PPP Agreement/Concession;</li> <li>Reporting on the PPP Agreement in the Contracting Authority's Annual Report.</li> </ul>
<b>The PPP contract performance information must be available to the public</b>	<p>No</p>
<b>Relevant legal/regulatory provisions (if any)</b>	<p>n/a</p>
<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</b>	<p>No</p>

<p><b>(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>	
<p><b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b></p>	<p>n/a</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>n/a</p>
<p><b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b></p>	<p>n/a</p>
<p><b>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</b></p>	<p>n/a</p>
<p><b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b></p>	<p>n/a</p>

<b>In other cases, flexibility to change the ownership structure and/or assign the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Section 70 and 71 of the PPP Policy briefly regulate “Amendments and Variations of PPP Agreement/Concessions” states: 4. A prior written approval of MOFEP-PID is required for any material amendments to a PPP Agreement/Concession, including any material variation to the outputs or any waivers contemplated or provided in the PPP Agreement/Concession. 5. MOFEP-PID will approve a material amendment only if it is satisfied the PPP Agreement/Concession, if so amended, continue to provide – Value for money; Affordability; and Substantial technical, operational and risk transfer to the private party.
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	According to Section 71 of the PPP Policy: 71. MOFEP-PID will approve a material amendment only if it is satisfied the PPP Agreement/Concession, if so amended, will continue to provide – Value for money; Affordability; and Substantial technical, operational and financial risk transfer to the private party.
<b>46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check</b>	No

<b>all that apply): A change in the scope and/or object of the contract.</b>	
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the risk allocation of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the financial and/or economic balance of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the duration of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the agreed price or tariff.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<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>	Section 1 of the Contracts Act, 1960 provides that where a contract has become impossible of performance or been otherwise frustrated and the parties thereto have, for that reason, been discharged from the further performance of the contract, the provisions of this section shall apply. However, Section 3 of the Contracts Act gives the parties to the Agreement the freedom to contract out of the provisions of the Contracts Act.
<b>Material Adverse government action</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Change in the Law.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Refinancing.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a

<b>Subcontracting and replacement of the subcontractors.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	No regulatory basis
<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>	No
<b>Domestic arbitration</b>	Yes
<b>International arbitration</b>	Yes
<b>Investor-State Dispute Settlement (ISDS)</b>	Yes
<b>Mediation</b>	No
<b>Please provide the relevant legal/regulatory/standard</b>	Ghana is part of ICSID and the New York Convention

<b>d contractual provisions (if any)</b>	
<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>	Pursuant section 57(1) of the Alternative Dispute Resolution Act, 2010 (Act 798), an award made by an arbitrator pursuant to an arbitration agreement may, by leave of the High Court, be enforced in the same manner as a judgment or order of the Court to the same effect. Furthermore, Ghana is member of ICSID and the New York Convention
<b>International arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	Pursuant to section 59 (1) of the Alternative Dispute Resolution Act 798, the High Court shall enforce a foreign arbitral award if it is satisfied that (a) the award was made by a competent authority under the laws of the country in which the award was made; (b) a reciprocal arrangement exists between the Republic of Ghana and the country in which the award was made; or (c) the award was made under the international Convention specified in the First Schedule to the Act or under any other international convention on arbitration ratified by Parliament; and (d) the party that seeks to enforce the award has produced (i) the original award or has produced a copy of the award authenticated in the manner prescribed by the law of the country in which it was made; (ii) the agreement pursuant to which the award was made or a copy of it duly authenticated in the manner prescribed by the law of the country, in which it was made, or in any other manner as may be sufficient, according to the laws of the Republic of Ghana; and (e) there is no appeal pending against the award in any court under the law applicable to the arbitration. Furthermore, Ghana is member of ICSID and the New York Convention
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	Ghana is member of ICSID and the New York Convention
<b>49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial</b>	No

difficulty prior to insolvency?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a	n/a

<b>direct agreement should be signed with the lenders.</b>	
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Other.</b>	n/a
<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>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a

Standard contractual provisions (if any):	
<b>Unsolicited Proposals</b>	
<b>34. Are unsolicited proposals in Ghana: (choose only one):</b> Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
<b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</b>	According to Section 62 of the National Policy on Public Private Partnerships, the submission of unsolicited proposals is permitted and their examination takes place on a case-by-case basis. Furthermore, the first article of the PPP toolkit for unsolicited proposals provides that: "The National Policy on PPP, June, 2011, approved by cabinet, allows private parties to submit unsolicited proposals for innovative projects and provided that they are not in the project list of any MDAs, i.e., they have not been, or are not being, considered by any MDA yet. The Policy also requires that unsolicited proposals are consistent with the national development agenda and are aligned with the long-term strategic investment plan for the sector.
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b>	According to Sections 62 and 63 of the National Policy on Public Private Partnerships, the submission of unsolicited proposals is permitted and their examination takes place on a case-by-case basis, and they should be consistent with the national development agenda, serve the public interest, needs and priorities of the contracting authority as well as long-term strategic plan for investment in that sector. Furthermore, Section 64 of the policy provides that the criteria for considering unsolicited proposals shall be provided in the PPP Manual/Guidelines and the standardized provisions. In all circumstances, unsolicited PPP projects shall be subject to a value for money, technical,

	<p>financial and economic assessment. Criteria shall be developed to prescribe circumstances under which unsolicited proposals shall be subjected to competitive process. Additionally, the Ministry of Finance and Economic Planning PPP Toolkit for Unsolicited Proposal (2012) reiterates the requirements listed in Sections 63 and 64 of the National Policy on Public Private Partnerships, mandating that the contracting authority shall review and establish that the unsolicited proposal: (a) is not currently on its list of investment projects already being considered, (b) offers innovation in design and an innovative approach to project development and management, (c) is consistent with the national development agenda, (d) is aligned with the MDA’s policy priorities and long term sector plans, (e) avoids onerous conditions upon government, (f) is in accordance with the guiding principles for PPPs as outlined in the National Policy on PPP, and (g) any follow-up requirements for completeness of proposed further work. Please note that similar to the PPP Policy, the PPP Toolkit for Unsolicited Proposals is not backed by an Act of Parliament and therefore does not have binding force. In practice, however it should be followed by the MDAs when dealing with Unsolicited proposals</p>
<p><b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>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>Yes</p>
<p><b>If yes, please specify and provide</b></p>	<p>Section 63 of the National Policy of PPPs and Article 1 of the PPP Toolkit for Unsolicited Proposals require unsolicited proposals to be consistent with the national development</p>

<b>the relevant legal/regulatory provisions (if any):</b>	<p>agenda and to be aligned with the long-term strategic investment plan for the sector. In fact, Section 63 provides that: “All unsolicited proposals shall be considered on a case-by-case basis and shall be limited to projects that are NOT in the project list of any Contracting Authority, has not already been considered by the Contracting Authority and that demonstrate genuine and substantial innovation and are supportive of public policy. In addition, the unsolicited proposal should be consistent with the national development agenda, serve the public interest, needs and priorities of the Contracting Authority as well as long-term strategic plan for investment in that sector”.</p> <p>Also, Article 1 of the Toolkit provides that: “The Policy also requires that unsolicited proposals are consistent with the national development agenda and are aligned with the long-term strategic investment plan for the sector”.</p> <p>Finally, Article 4 of the Toolkit provides that • Step-Two: The MDA shall review and establish that the unsolicited proposal: a) is not currently on its list of investment projects a/ready being considered, b) offers innovation in design and an innovative approach to project development and management, c) is consistent with the national development agenda, d) presents a new and cost-effective method of service delivery, d) is aligned with the MDA’s policy priorities &amp; long-term sector plans, e) avoids onerous conditions upon government, f) is in accordance with the guiding principles for PPPs as outlined in the National Policy on PPP and e) any follow-up requirements for completeness of proposed further work. The unsolicited proposal must contain information that allows the MDA to establish the above by clearly stating the project goals, objectives, outputs and outcomes - In terms of the services it would provide and the needs gap it would fulfil, approach and scope of the proposed project or service, description of how the proposal is innovative and evidence that the proponent is the sole provider of the innovation;</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>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b>	<p>No</p>

<b>Please elaborate and provide examples:</b>	n/a
<b>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Section 25 of the Procurement Act states that participation in procurement proceedings shall be on a competitive basis. Additionally, the Toolkit for Unsolicited Proposals provides in Paragraph 4 that the ministries, departments and agencies shall recruit a transaction advisor to prepare pre-feasibility and full feasibility studies from the perspective of government in accordance with the National Policy, and the studies will be used as benchmarks to independently review the initial business case. Finally, if the unsolicited proposal is determined to be viable, the transaction advisor will be required to further assist the MDA to plan, structure and undertake a competitive procurement process that would include the unsolicited proposal.
<b>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	n/a
<b>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</b>	No

<b>and/or automatic shortlisting.</b>	
<b>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</b>	No
<b>39.3 Bid Bonus.</b>	No
<b>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</b>	No
<b>39.5 Other.</b>	No
<b>Please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a