



PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN GUATEMALA

| SURVEY QUESTION | ANALYSIS |
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| PPP Regulatory Framework | |
| 2. Does the regulatory framework in your country allow procuring PPPs? | Yes |
| If yes, please specify the relevant regulatory framework and the year of adoption: | <p>PPPs in Guatemala are regulated by the Decree No. 16-2010 that approves the Law of Partnerships for Economic Infrastructure Development -Decreto No. 16-2010 que aprueba la Ley de Alianzas para el Desarrollo de Infraestructura Economica- (the “PPP Law”) and its Regulation approved by Decree No. 360-2011 (the “PPP Regulations”) and our analysis will focus on the processes established by this regulatory framework. According to our contributors, before the approval of the PPP Law there was no applicable regulatory framework for PPPs in Guatemala. Also, since the PPP law was approved, no PPP project has been awarded but there are 7 projects in the pipeline. Information about PPP projects in development is available online in the following link: http://www.agenciadealianzas.gob.gt/wpsite/proceso-de-app-guatemala/</p> |
| and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it: | http://www.agenciadealianzas.gob.gt/es/marco-legal |
| 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? | No |
| Please describe: | n/a |
| 2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017? | No |
| Please describe: | n/a |
| 3.1 Besides national defense and other matters of national | No |

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| <p>security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</p> | |
| <p>If yes, please provide the relevant legal/regulatory provisions:</p> | n/a |
| <p>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</p> | Yes |
| <p>If yes, please provide the relevant legal/regulatory provisions:</p> | <p>Article 2 of the PPP Law: Scope. This Act shall apply to partnerships contracts for the development of economic infrastructure, aimed at the creation, construction, development, utilization, exploitation, maintenance, modernization and expansion of infrastructure, highways, roads, ports, airports, projects of generation, transmission and sale of electricity and railways, including the provision of necessary equipment. This does not include water and irrigation.</p> |
| <p>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.</p> | No |
| <p>If yes, please provide the relevant legal/regulatory provisions:</p> | n/a |
| <p>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</p> | No |

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| If yes, please provide the relevant legal/regulatory provisions: | n/a |
| 3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other | Yes |
| If yes, specify and provide the relevant legal/regulatory provisions: | The PPP Law can not be applied to the infrastructure in education, health (and water as already mentioned), according to its Article 2: Scope. This Act shall apply to partnerships contracts for the development of economic infrastructure, aimed at the creation, construction, development, utilization, exploitation, maintenance, modernization and expansion of infrastructure, highways, roads, ports, airports, projects of generation, transmission and sale of electricity and railways, including the provision of necessary equipment. |
| 4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)? | Yes |
| If yes, please specify and provide the relevant legal/regulatory provision (if any): | If the private party obtains financing by any title or security their transmission shall be exempted from the value added tax (VAT) in accordance with Article 34 section E of the PPP Law. |
| 5. Please identify the PPP procuring authorities in Guatemala and provide their website(s) (if available): | According to Article 6 of the PPP Law, the procuring authority is the body, entity or state institution, centralized, decentralized or autonomous, that contracts with a private partner the construction, delivery or provision of a service under its authority. For instance: Ministry of Communication, Infrastructure, and Housing (www.civ.gob.gt); Ministry of Economy (www.mineco.gob.gt); Ministry of Finance (www.minfin.gob.gt). The PPP projects shall be structured under the assessment of ANADIE, the Guatemalan agency responsible for the application of the PPP Law as mentioned below. |
| 6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)? | Yes |

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| If yes, please indicate its name, and its website (if available): | National Agency Partnerships for the Development of Economic Infrastructure (Agencia Nacional de Alianzas para el Desarrollo de Infraestructura Económica, ANADIE by its name in Spanish) www.agenciadealianzas.gob.gt/wpsite/ . Hereinafter referred as the "ANADIE". |
| 6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance. | Yes |
| 6.2 PPP capacity building for other public authorities. | Yes |
| 6.3 PPP promotion among the public and/or private sectors in national and international forums. | Yes |
| 6.4 Technical support in implementing PPP projects. | Yes |
| 6.5 Identification and selection of PPP projects from the pipeline. | No |
| 6.6 Revision of fiscal risks born by the Government. | No |
| 6.7 Consultation with affected communities on potential impact of PPP projects. | No |
| 6.8 Approval of PPP projects. | Yes |
| 6.9 Undertaking the procurement of PPPs. | No |
| 6.10 Oversight of PPP implementation. | Yes |
| 6.11 Other | No |
| 6.11 please specify: | n/a |
| Please provide the relevant legal/regulatory provisions: | According to Article 7 of the PPP regulations, the ANADIE is responsible for ensuring the compliance with the PPP Law and its Regulations. According to the ANADIE's website, its main objectives are to promote private investment, and support the development of PPP projects. |
| PPP Preparation | |
| 8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before | Yes |

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| launching the procurement process? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 37.b) of the PPP Law indicates that a study regarding the budgetary and financial impact of the PPP must be conducted and approved by the Ministry of Finance before a PPP procurement process can be initiated. If the Ministry of Finance considers unsuitable to proceed with the PPP project, the procuring authority and ANADIE will have to abstain from continuing the process until the Ministry of Finance is satisfied that the project is suitable. |
| 8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 31 of the PPP Law regulates budgetary commitments arising from PPPs: In cases where the PPP contract stipulates payments to the private partner that exceeds one fiscal year, each procuring authority must include in its draft investment budget for each fiscal year during the term of the contract, the allocation equivalent to the stipulated payment, deducting the payment programmed by the private equity fund for that year. The budgetary commitments of future years derived from the future payment obligations of PPPs should be fully identified within the public debt authorization established in the budget. Article 72 of the PPP Law further regulates the inclusion within the annual budget of the required expenditures to be made based on agreed guarantees to PPP contracts. |
| Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs. | No |
| If yes, please provide the relevant | n/a |

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| legal/regulatory provisions (if any): | |
| 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). | No |
| Accounting and reporting according to other international standard (e.g. European System of Accounts). | No |
| Please specify: | n/a |
| Other. | Yes |
| Please specify: | According to our contributors, there is an effort to implement the IPSAS but they are not legally binding. There is a committee within the Ministry of Finance to implement these rules. See Acuerdo Gubernativo 92-2011 http://www.minfin.gob.gt/images/archivos/prensa/normas_internacionales_conta/acuerdomin92_2011.pdf |
| 9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)? | Yes |
| If yes, please specify the relevant authority | Besides the Ministry of Finance, according to Article 37 of the PPP Law, the Council of ANADIE also must approve the pre-investment studies of the PPP before initiating the procurement process. Moreover, the last paragraph of Article 37 also requires approval of the PPP project by the Ministry of the Environment and the Planning Secretariat. |
| and provide the relevant legal/regulatory provisions (if any): | Article 37 of the PPP Law |
| 9.1. Besides the procuring authority and the Ministry of | Yes |

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| Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Article 12 and 62 of the PPP Law, before its signature, the PPP contract have to be approved by the Congress and the Constitutional President of the Republic. |
| 10. Does the procuring authority use transaction advisors during the PPP project cycle? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| 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 | No |

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| public investment priorities. | |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| 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. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Article 13 of the PPP Law, the Council of ANADIE must prioritize projects that maximize benefits to the society. The Council is comprised by the Ministry of Finance (the president of the Council), the Ministry of Economy, the Secretary of National Planning and other Ministries. |
| The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice. | No |
| If yes, please elaborate: | n/a |
| The procuring authority does not evaluate PPPs against existing government priorities. | No |
| Please elaborate and provide examples: | n/a |
| 11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above? | Yes |
| If yes, please specify: | Contributors answering this question confirm that consistency is respected in practice and current projects are being promoted in consistency with government priorities. |
| If no, please elaborate: | n/a |

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| 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) | <p>Yes</p> |
| Relevant legal/regulatory provision (if any) | <p>Article 37 of the PPP Law requires conducting an economic feasibility assessment (37.a) and a study of the social and environmental impact of the PPP (Article 37.c)</p> |
| Is there a specific methodology for the assessment? | <p>No</p> |
| If yes, please elaborate | <p>n/a</p> |
| Is the assessment done in practice? | <p>Yes</p> |
| Details: | <p>Contributors answering this question confirm that this assessment is done in practice</p> |
| 12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities) | <p>Yes</p> |
| Relevant legal/regulatory provision (if any) | <p>Article 37 of the PPP Law requires that the Ministry of Finance assess the budgetary and financial impact of the PPP</p> |
| Is there a specific methodology for the assessment? | <p>No</p> |
| If yes, please elaborate | <p>n/a</p> |
| Is the assessment done in practice? | <p>Yes</p> |
| Details: | <p>Contributors answering this question confirm that this assessment\ is done in practice</p> |
| 12.3. Risk identification, allocation and assessment (risk matrix) | <p>Yes</p> |

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| Relevant legal/regulatory provision (if any) | The feasibility assessment regulated by article 37.a must include an assessment of the risk associated with the PPPs. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | Contributors answering this question confirm that this assessment is done in practice. |
| 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) | No |
| Relevant legal/regulatory provision (if any) | n/a |
| Is there a specific methodology for the assessment? | n/a |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | n/a |
| Details: | n/a |
| 12.5. Financial viability or bankability assessment | Yes |
| Relevant legal/regulatory provision (if any) | According to Article 37.a of the PPP Law, the assessment to decide the feasibility of the PPP must include the financial and market perspective. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | Contributors answering this question confirm that this assessment is done in practice |
| 12.6. Market sounding and/or assessment (showing evidence of investors' | No |

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| interest in the market for the project) | |
| Relevant legal/regulatory provision (if any) | n/a |
| Is there a specific methodology for the assessment? | n/a |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | n/a |
| Details: | n/a |
| 12.7. Environmental impact assessment | Yes |
| Relevant legal/regulatory provision (if any) | Article 37 of the PPP Law requires conducting an economic feasibility assessment (37.a) and a study of the social and environmental impact of the PPP (article 37.c) |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | Contributors confirm that is conducted by the Ministry of Environment and Natural Resources (Ministerio de Ambiente y Recursos Naturales). |
| 12.8. Consultation process with affected communities on potential impact of the PPP project | Yes |
| Relevant legal/regulatory provision (if any) | Article 38 of the PPP Law: Approach to the communities. When the characteristics of the PPP project demand it, the procuring authority must previously establish and execute properly documented mechanisms of approach, information and communication with the communities in which the project (s) will be executed. The procedures for making these approaches should be regulated in the regulations of this Law. Articles 90 to 93 of the PPP Regulations further details this matter. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | No Data |
| Details: | n/a |
| 13. Does the procuring authority include the assessments (indicated in Question | Yes |

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| 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| and specify which of the assessments are included in the request for proposals and/or tender documents: | According to our contributors some of the results of the studies are included, however the bidders sometimes request the complete studies during the bidding process which could be published if it is available and at authority's own discretion. |
| 13.1. Are the assessments published online? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| specify the website | n/a |
| please specify which of the assessments are published online: | n/a |
| 14. Does the procuring authority include a draft PPP contract in the request for proposals? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 41 of the PPP Law establishes that the tender documents "shall contain the project specifications and the substantial and objective provisions to be included in the contract". |
| If no, please elaborate | n/a |
| 14.1. Are the tender documents published online? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 46 of the PPP Law establishes that the tender documents must be published on the agency's web page and in Guatecompras. |
| and please specify the website: | www.guatecompras.gt , www.agenciadealianzas.gob.gt |
| 15. In a case comparable to the case study | No |

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| assumptions, have standardized PPP model contracts and/or transaction documents been developed? | |
| If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them: | n/a |
| 16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity) | No |
| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | Yes |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | Article 65 of the PPP Law: Before signing the contract, the private partner shall obtain municipal licenses and other licenses required for the development of the project (...) In case the municipalities don't provide the licenses, the Council of ANADIE will coordinate and manage with the municipal council the required actions. |
| 16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity) | No |
| Private Partner | No |
| Private partner with facilitation role assigned to the | Yes |

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| procuring authority (or other Government entity) | |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | Article 65 of the PPP Law: Before signing the contract, the private partner shall obtain municipal licenses and other licenses required for the development of the project (...) In case the municipalities don't provide the licenses, the Council of ANADIE will coordinate and manage with the municipal council the required actions. |
| 16.3. Obtaining the required operational permits: Procuring authority (or other Government entity) | No |
| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | Yes |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | Article 65 of the PPP Law: Before signing the contract, the private partner shall obtain municipal licenses and other licenses required for the development of the project (...). |
| 16.4. Obtaining the required land: Procuring authority (or other Government entity) | Yes |
| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | No |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | Article 66 of the PPP Law: Declare of collective utility and public interest the required expropriations for the PPP projects. The ANADIE Council will be in charge and it shall have faculties to manage by itself the needed expropriations. The necessary disbursements may be paid by the private participant or by the Agency, as established in the bidding rules. Article 145 of the PPP Regulations also indicates that the Contract will reference: VII. The rights of way and the properties that can be expropriated. |
| 16.5. Obtaining the required right of way: Procuring authority (or other Government entity) | Yes |

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| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | No |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | Article 66 of the PPP Law: Declare of collective utility and public interest the required expropriations for the PPP projects. The ANADIE Council will be in charge and it shall have faculties to manage by itself the needed expropriations. The necessary disbursements may be paid by the private participant or by the Agency, as established in the bidding rules. Article 145 of the PPP Regulations also indicates that the Contract will reference: VII. The rights of way and the properties that can be expropriated. Article 65.f states regarding easements in particular, that when the execution of the works is necessary to modify easements constituted in favor of already existing third parties, the private participant will be responsible for the restitution of the service covered by the easement of that is to its initial state, restitution that must be financed by the private participant in the form that establishes the bases of tendering. |
| PPP Procurement | |
| 18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 49 of the PPP Law: Bids will be evaluated by an evaluation committee composed of two representatives of ANADIE, a representative of the Ministry of Finance Public, a representative of the Ministry of Planning and Programming of the Presidency and a representative of the procuring authority. The members of the Commission may be employed under any row budget and in any cases, must have professional experience of at least four years” |
| The bid evaluation committee members require sufficient qualification without specific details. | No |
| If yes, please provide the relevant | n/a |

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| legal/regulatory provisions (if any): | |
| The bid evaluation committee members are not required to have any specific qualifications. | No |
| Please elaborate and provide examples: | n/a |
| 19. Does the procuring authority issue a public procurement notice of the PPP project? | Yes |
| If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any): | According to Article 45 of the PPP Law, ANADIE must publish the procurement notice two times in national newspapers, two times in an international magazines specialized in government procurement and also in GUATECOMPRAS and the web page of ANADIE. |
| 19.1. If yes, is the public procurement notice published online? | Yes |
| If yes, please specify the website: | www.agenciadealizas.gob.gt ; http://www.guatecompras.gt |
| 20. Are foreign companies prohibited from participating in the bidding process? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Article 46 of the PPP Law, there will be at least 60 days between the last publication of the procurement notice and the date set for submission of the proposals. |
| and the time in calendar days: | 60 |
| 22.1. In a case comparable to the case study | No |

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| assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available | |
| Default | Yes |
| Relevant legal/regulatory provision (if any) | Art 40 et seq. regulate the tendering process required to always be public and competitive. |
| 22.2. Restricted tendering (with pre-qualification stage): Available | Yes |
| Default | No |
| Relevant legal/regulatory provision (if any) | Article 60 of the PPP Law provides the prequalification of bidders as the default method for matters of great complexity: ANADIE's Board should establish a prequalification process for national and international bidders, in order to select potential bidders, in the case of complex projects in which it is necessary to ensure the participation of suitable companies with recognized experience in the projects in question. Without such prequalification of the private participant, the Council will not approve the PPP project. The prequalification bases will define the objectives and requirements that are necessary to participate in this type of events, as long as they do not constitute arbitrary elements and preserve the equality of treatment between the participants of this process. |
| 22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.4. Competitive dialogue: Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.5. Direct negotiation with more than one candidate: Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |

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| 22.6. Direct negotiation with only one candidate: Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.7 Other. Specify: | No |
| Available | n/a |
| Default | n/a |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 41 of the PPP Law regulates the mandatory content of the tender documents without specifying that it has to expressly include the stages of the process. This is further regulated in Article 103 of the PPP Regulations that requires to include in the tender documents among others: the possibility of requiring pre-qualification, a chronogram of the procurement procedure, etc. |
| If no, please elaborate: | n/a |
| 22.9. Do the tender documents specify the prequalification/short listing criteria (when applicable) in order to make them available to all the bidders? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to article 60 of the PPP Law, “ the prequalification guidelines shall define the objectives and requirements necessary to participate, without introducing arbitrary elements and ensuring equal treatment among the participants of this process”. |
| 22.10. Based on your experience, is it always the case that the specified criteria are respected in practice? | Yes |
| If yes, please specify and provide the relevant | Contributors answering this question confirm that prequalification criteria is respected in practice. |

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| legal/regulatory provisions (if any): | |
| If no, please elaborate: | n/a |
| 23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to article 61 of the PPP Law “interested parties may submit consultations and clarifications in writing and by any electronic means regarding the tender documents and the draft contract”. |
| 23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to article 61 of the PPP Law, “both the requests and the responses shall be available for all stakeholders in the website of ANADIE and GUATECOMPRAS website”. |
| 23.2. Based on your experience, is it always the case that this disclosure of information is done in practice? | Yes |
| If yes, please specify: | Contributors answering this question confirm that prequalification criteria is respected in practice. |
| If no, please elaborate: | n/a |
| 24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference? | Yes |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | Article 103 of the PPP Regulations regarding the content of the tender documents includes: When applicable, the place, date and time scheduled for the visit or visits to the job site and XVI. The dates, times and places scheduled to hold clarification meetings. |

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| 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? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>No regulatory basis</p> |
| 24.2. Based on your experience, is it always the case that this disclosure of information is done in practice? | <p>Yes</p> |
| If yes, please specify: | <p>Contributors answering this question confirm that the information is disclosed in practice.</p> |
| If no, please elaborate: | <p>n/a</p> |
| 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? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>No regulatory basis</p> |
| If no, please elaborate: | <p>n/a</p> |
| 26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>According to Article 53 of the PPP Law: "The award of the tender will be decided according to the assessment system the Agency has established and included in the tender documents".</p> |

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| Evaluation criteria is not set in the tender documents | No |
| 27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted. | No |
| Please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents. | Yes |
| Please provide the relevant legal/regulatory provisions (if any): | Article 128 of the PPP Law regulations: the project will be awarded even if there is only one bidder, as long as it meets all requirements of the tender documents. |
| The procuring authority does not award a PPP contract if only one proposal is submitted. | No |
| Please provide the relevant legal/regulatory provisions (if any): | n/a |
| The regulatory framework does not include any provisions. | No |
| 28. Does the procuring authority publish the award notice? | Yes |

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| If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any): | According to Article 54 of the PPP Law the awarding notice must be published in the website of ANADIE and in GUATECOMPRAS |
| 28.1. If yes, is the public procurement award notice published online? | Yes |
| If yes, please specify the website: | www.guatecompras.com.gt; www.agenciadealianzas.gob.gt |
| 29. Does the procuring authority provide all the bidders with the result of the PPP procurement process? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 56 of the PPP Law requires to notify the awarding resolution to all bidders |
| If no, please elaborate: | n/a |
| 29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Article 54 of the PPP Law awarding resolutions “must be motivated”. Awarding resolutions are then published and notified to the bidders according to Article 56. |
| 30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| and the time in calendar days: | 5 |
| 30.1. Is the standstill period set out in the | No |

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| notice of intention to award? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 64 of the PPP Laws requires that the contract reflects the content of the tender documents. |
| 31.1. Based on your experience, is it always the case that this restriction is respected in practice? | No Data |
| If yes, please specify: | n/a |
| If no, please elaborate: | No PPP projects have been awarded so far. |
| 32. Does the procuring authority publish the PPP contract? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 30 of the PPP Law and Articles 151 and 152 of the PPP Regulations, indicate that the contracts must be registered in a Public Register and it should be accessible to anyone. |
| 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 | Yes |
| Publication of the full PPP contract without including all its annexes and appendixes | No |

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| Publication of a summary of the PPP contract without publishing the full PPP contract | No |
| Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes | No |
| Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes | No |
| 32.2. If yes, is it published online? | Yes |
| If yes, please specify the website: | www.guatecompras.gt, www.agenciadealianzas.gob.gt |
| 32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| PPP Contract Management | |
| 41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Article 78-93 of the PPP Law, regulated the implementation of the contract, establishing in general, oversight and audit functions within ANADIE. Moreover, Article 186 of the PPP Regulations establishes that the procuring authority is also responsible for the contract management. |
| 41.1. If yes, which of the following tools does it include (check | Yes |

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| all that apply)?: Establishment of a PPP contract management team | |
| Relevant legal/regulatory provisions (if any): | According to Article 78 of the PPP Law, both, a Directory Ad-hoc and an Inspector will be designated for the supervision and management of each PPP contract. |
| Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa | No |
| Relevant legal/regulatory provisions (if any): | n/a |
| Elaboration of a PPP implementation manual or an equivalent document | No |
| Relevant legal/regulatory provisions (if any): | n/a |
| Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project) | No |
| Relevant legal/regulatory provisions (if any): | n/a |
| Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.) | No |
| Relevant legal/regulatory provisions (if any): | n/a |
| 41.2. Which of the following options best describes the required qualifications of the PPP contract management team | Yes |

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| 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. | |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | <p>Article 78 of the PPP Law states that the Directory ad-hoc will be comprised of members of ANADIE and from the procuring authority, and the Inspector shall be engineer with specialization in the areas of the project and relevant experience.</p> |
| The PPP contract management team members are required to meet sufficient qualification without specific details. | <p>No</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>n/a</p> |
| The PPP contract management team members are not required to meet any specific qualifications. | <p>No</p> |
| Please elaborate and provide examples: | <p>n/a</p> |
| 42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>Article 79 of the PPP Law provides for the appointment and functions of the Inspector during the construction phase.</p> |
| 42.1. If yes, is the PPP contract construction performance information made available to the public? | <p>Yes</p> |
| If yes, please provide the relevant | <p>Article 79 of the PPP Law establishes that the Inspector will be in charge of the book of works and it shall be available in the website of ANADIE.</p> |

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| legal/regulatory provisions (if any): | |
| 42.2. If yes, is the PPP contract construction performance information made publicly available online? | Yes |
| If yes, please specify the website: | www.agenciadealianzas.gob.gt |
| 43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Articles 80 and 81 establishes the responsibilities of the Direction of Supervision relating the compliance of standards of services and the verification of users' rights on the operational phase of the concession. |
| 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 | Yes |
| Relevant legal/regulatory provisions (if any) | <p>Article 105 of the PPP Law regulation establish the requirement to formulate service levels: Service levels should be formulated for each Project in accordance with the following criteria:</p> <ul style="list-style-type: none"> I. Ensure the best levels of quality considering the cost of the service. II. Be objective so that they can be measured through a procedure approved by the Council and which can be assessed periodically. III. Be clear and enunciate in a concrete way avoiding equivocal language. IV. Establish the possibility that the Executive Direction or the Contracting Institution of the State can request adjustments to the service when the needs of the users so demand considering the circumstances, the Infrastructure and in the service manual that specifies the Contract. |
| The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations | No |

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| under the PPP contract | |
| Relevant legal/regulatory provisions (if any) | n/a |
| The private partner must provide the procuring or contract management authority with periodic operational and financial data | Yes |
| Relevant legal/regulatory provisions (if any) | Article 82 of the PPP Law and Article 239 of the PPP Regulations require the PPP Concessionaire to provide all the information as required by the authorities with oversight responsibility over the PPP contract |
| The procuring or contract management authority must periodically gather information on the performance of the PPP contract | Yes |
| Relevant legal/regulatory provisions (if any) | Article 87 of the PPP Law establishes that ANADIE must periodically verify that the service standards are met. |
| The PPP contract performance information must be available to the public | Yes |
| Relevant legal/regulatory provisions (if any) | Article 86 of the PPP Law establishes the publication of the Reports of the Direction of Supervision (containing performance indicators) on the website of ANADIE. |
| 43.2. Is PPP contract performance information made publicly available online? | Yes |
| If yes, please specify the website: | www.agenciadealianzas.gob.gt |
| 44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 45. Does the regulatory framework (including standard | Yes |

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| <p>contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?</p> | |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>Article 145 of the PPP Regulations provides for the inclusion in the contract of provisions regarding change of ownership on the SPV.</p> |
| <p>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).</p> | <p>Yes</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>According to Article 145 of the PPP Regulations, the contract should establish the rules relating to changes of at least 25% of the equity of the SPV during the first 3 years of operation of the SPV, specifying that: a) the incorporation of new shareholders with over 10% of participation shall be approved by the Direction of ANADIE, b) sell of more than 25% of shares will require approval from ANADIE, c) the original shareholders shall keep at least 60%, except in exceptional cases, d) the sell of shares shall not change the existing individual guarantees.</p> |
| <p>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</p> | <p>No</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>In other cases, flexibility to change the ownership structure and/or assign the contract.</p> | <p>Yes</p> |

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| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</p> | <p>No</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>A change in the risk allocation of the contract.</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |

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| dard contractual provisions (if any): | |
| A change in the financial and/or economic balance of the contract. | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the duration of the contract. | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the agreed price or tariff. | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 46.3. Can the procuring authority unilaterally modify a PPP contract? | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 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 | Yes |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 3 of the PPP Law defines Force Majeure and then considers it a cause for contract termination in Article 73. |

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| Material Adverse government action . | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Change in the Law. | Yes |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 70 of the PPP Law regulates the right to be compensated for actions of the government made after the award, including change in the law. |
| Refinancing. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Subcontracting and replacement of the subcontractors. | Yes |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 150 provides for the contract to regulate the conditions on which subcontractors can be hired by the private partner. |
| 48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | Articles 94 to 104 of the PPP Law establish a specific dispute resolution mechanism for PPPs |
| 48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body | No |

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| If yes, please specify: | n/a |
| Local courts | No |
| Domestic arbitration | Yes |
| International arbitration | Yes |
| Investor-State Dispute Settlement (ISDS) | Yes |
| Mediation | Yes |
| Please provide the relevant legal/regulatory/standard contractual provisions (if any) | <p>Article 94 to 104 of the PPP law. In particular according to Article 95 of the PPP Law: Disputes arising as a result of a PPP shall be resolved through any of the following mechanisms:</p> <p>a) Through conciliation and local arbitration in Guatemala before the Ad-hoc Arbitration Commission that regulates the PPP Law;</p> <p>b) Through conciliation and international arbitration, in cases where the private participant prefers to resolve disputes under that jurisdiction, provided that it has resigned prior to the issuance of the conciliation resolution or local arbitration established by this Law.</p> |
| 48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration | Yes |
| If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any): | <p>Article 94 to 104 of the PPP law. In particular Article 95 of the PPP Law states that both the arbitration resolution established in subparagraph a) (domestic) and b) (international) constitute arbitral awards in law, which will be subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 or New York Convention. Moreover, Article 102 of the PPP Law establishes that the arbitral award will be executive and mandatory from its notification</p> |
| International arbitration | Yes |
| If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any): | <p>Article 94 to 104 of the PPP law. In particular Article 95 of the PPP Law states that both the arbitration resolution established in subparagraph a) (domestic) and b) (international) constitute arbitral awards in law, which will be subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 or New York Convention.</p> |
| Investor-State arbitration | Yes |
| If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any): | <p>Article 94 to 104 of the PPP law. In particular Article 95 of the PPP Law states that both the arbitration resolution established in subparagraph a) (domestic) and b) (international) constitute arbitral awards in law, which will be subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 or New York Convention. Article 95 makes an explicit recognition to the validity of Investor State Dispute Settlement. Guatemala is also a member of the ICSID Convention.</p> |
| 49. Does the regulatory framework (including standard | No |

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| <p>contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?</p> | |
| <p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>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?</p> | <p>Yes</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>According to Article 65 of the PPP Law: "Contracts shall contain the requirements and conditions under which may be authorized by the Agency, the transfer of control of PPP to their financiers, as long as the main purpose of such transfer is the financial restructuring of society and the continued implementation of the project partnerships for development of economic infrastructure".</p> |
| <p>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.</p> | <p>No</p> |
| <p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</p> | <p>No</p> |

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| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| The regulatory framework prescribes that the lender step-in rights should be regulated in the contract. | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 65 of the PPP law: "Contracts shall contain the requirements and conditions under which may be authorized by the Agency, the transfer of control of PPP to their financiers, as long as the main purpose of such transfer is the financial restructuring of society and the continued implementation of the project partnerships for development of economic infrastructure". |
| Other. | No |
| Please Specify: | n/a |
| 51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | According to Article 73 of the PPP Law the termination can take place in case of: a) expiration of the term or compliance of condition; b) breach of contractual obligations; c) causes stated the bidding offer and the agreement; and d) Force Majeure events during construction period. |
| 51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 143 of the PPP law regulation, indicates that the contract must establish the consequences. |
| Unsolicited Proposals | |
| 34. Are unsolicited proposals in | No |

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| Guatemala : (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F) | |
| Explicitly allowed by the legal framework? | No |
| Not regulated by the legal framework, but do happen in practice? | No |
| Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F) | Yes |
| If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions | n/a |
| 35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37) | n/a |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any) | n/a |
| 35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal? | n/a |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 36. Which of the following options best describe how the procuring authority ensures that | n/a |

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| <p>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.</p> | |
| <p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p> | n/a |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p> | n/a |
| <p>Please elaborate and provide examples:</p> | n/a |
| <p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p> | n/a |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>38. Does the procuring authority grant a minimum</p> | n/a |

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| period of time to additional prospective bidders (besides the proponent) to prepare their proposals? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| and the time in calendar days: | n/a |
| 39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting. | n/a |
| 39.2 Developer's fee (reimbursing the original proponent for the project development cost). | n/a |
| 39.3 Bid Bonus. | n/a |
| 39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract). | n/a |
| 39.5 Other. | n/a |
| Please specify: | n/a |
| Please provide the relevant legal/regulatory provisions (if any): | n/a |