

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN HAITI

SURVEY QUESTION	ANALYSIS
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 Haiti are divided between institutional PPPs and contractual PPPs. The following research will focus on the contractual ones. PPPs are not specifically regulated but are encompassed by the public procurement regulations:</p> <ul style="list-style-type: none"> (i) Law CL 06 2009-009 sets the general rules of procurement, execution and payment of public procurement contracts above the public procurement thresholds, hereinafter the “PPP Law”; (ii) Regulation of October 26th 2009 defines the application modalities of the public procurement Law, hereinafter the “PP Regulations”; (iii) Regulation of October 26th 2009 sets the organization and functioning of the National Commission of Public Procurement, hereinafter the “Commission Regulation”; (iii) Ethics Charter is applicable to actors of public procurement contracts and conventions of concession of public service facility (Regulation of December 21th 2012), hereinafter the “Ethics Charter”; (iv) Handbook of procedures for procuring public procurement contracts and conventions of concession of public service facility (Regulation of October 26th 2009), hereinafter the “Handbook” (v) Standard clauses for conventions of concession of public service facility (hereinafter the “standard clauses of concessions”) <p>Article 4 of the PPP Law defines a concession of a public service facility as: administrative contract by which the private operator - concessionaire - is chosen by the procuring authority in order to build and operate at its expenses a public service facility in exchange for its exploitation and transfer to the procuring authority at the contract’s expiration.</p> <p>Circular no BM/UCG/PPP/024/11-12 of 2012 created the Central Unit of PPP’s management. This Unit is in charge of administrating the PPP program.</p> <p>The Law No. 75-A on modernization of public companies of October 2nd, 1996 allows the State to entrust a private investor with a right to exploit and/or operate public companies, as concession or any other operation agreement. Concessions will be a matter of the council of modernization if they are public companies chosen within the modernization program. The Council can then decide between a contract of operation, concession or capitalization. In case of modernization by Concession, the State through the Council in its quality of owner confers to the concessionaire the right to run the company during a determined time. In return, the concessionaire pays renting fees(royalties) and has to realize investment expenditure in the aforementioned company, according to specificities defined in the tender documents and contained in</p>

	<p>the contract of concession. Any development and improvement made in the physical frame of the company will remain the property of the State (Article 9).</p> <p>However, considering the specificity of those concessions, the following study will be based on the framework set by the public procurement Law and regulations.</p> <p>Our analysis will be based on the general regulations; sectorial regulations are however also in place. Those include (i) Law on organization of the potable water sector and sanitation of March 11th, 2009, (ii) Decree of August 20th, 1989 organizing electricity in Haiti, (iii) Decree September 29th, 1980 creating and organizing the national Airport authority.</p>
<p>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</p>	<p>www.cnmp.gouv.ht</p>
<p>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?</p>	<p>No</p>
<p>Please describe:</p>	<p>n/a</p>
<p>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</p>	<p>Yes</p>
<p>Please describe:</p>	<p>A PPP Law, a Law related to a PPP Unit and regulations related to audit and monitoring of partnership contracts are in preparation.</p>
<p>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.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<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>	<p>No</p>

If yes, please provide the relevant legal/regulatory provisions:	n/a
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.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
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	No
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	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
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):	Pursuant to Article 6.2.7 of the standard clauses for concessions, the procuring authority guarantees the concessionaire the benefits and actual application of a preferential tax system as necessary.
5. Please identify the PPP procuring authorities in Haiti and provide their website(s) (if available):	Pursuant to article 68 of the public procurement Law, the State and regional entities can enter into concession agreements.
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes

<p>If yes, please indicate its name, and its website (if available):</p>	<p>The Central Unity of PPP monitoring, according to circular 2012, is in charge of the administrative management of the PPP Program. Its attributions are consequently limited to being preferred contact regarding acquisition of holdings in private projects, regarding access to the public land and negotiation of all the forms of PPPs, except those being a matter of the Council of modernization of public companies. Those being a matter of the council of modernization are public companies chosen within the modernization program. The Council can then decides between a contract of operation, concession or capitalization (Articles 7 and 8 of the Law on modernization).</p> <p>The national commission of public procurement is in charge of regulation and control of the procurement system of concessions, under the Prime Ministry's authority. It (i) Develops the regulations governing procurement contracts and concessions to run a public service; (ii) expresses opinions, recommendations and proposals on the definition of the purchase policy public; (iii) contributes to the training of the actors of public purchase and to (iv) the evaluation of their performances in the execution and the control of procurement contracts and the concessions concluded by the person public; (v) implements procedures of audit of contracts concluded by the public authorities and expresses opinions within the framework of the amicable settlement of the disputes risen within one of those contracts (Articles 9 and next of the PPP Law, Commission Regulation provides more details).</p>
<p>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</p>	<p>Yes</p>
<p>6.2 PPP capacity building for other public authorities.</p>	<p>Yes</p>
<p>6.3 PPP promotion among the public and/or private sectors in national and international forums.</p>	<p>Yes</p>
<p>6.4 Technical support in implementing PPP projects.</p>	<p>Yes</p>
<p>6.5 Identification and selection of PPP projects from the pipeline.</p>	<p>Yes</p>
<p>6.6 Revision of fiscal risks born by the Government.</p>	<p>Yes</p>
<p>6.7 Consultation with affected communities on potential impact of PPP projects.</p>	<p>Yes</p>
<p>6.8 Approval of PPP projects.</p>	<p>Yes</p>
<p>6.9 Undertaking the procurement of PPPs.</p>	<p>No</p>
<p>6.10 Oversight of PPP implementation.</p>	<p>Yes</p>
<p>6.11 Other</p>	<p>Yes</p>

6.11 please specify:	The Central Unity of PPP monitoring, according to circular 2012, is in charge of the administrative management of the PPP Program. Its attributions are consequently limited to being preferred contact regarding acquisition of holdings in private projects, access to public land and negotiation.
Please provide the relevant legal/regulatory provisions:	Circular 2012 is related to the PPP Unit. The public procurement commission's missions are in Article 10 of the public procurement Law and include: preparing regulations and guidelines; circulate information on public procurement; contribute to the training of public procurement actors; audit public procurement; sanction in case of irregularities in procurement or implementation; issue advice on dispute resolution.
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 5.1 of the Handbook, approval is the act by which the central, deconcentrated or decentralized authority confirms the credit availability for implementing a public procurement contract.
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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 legal/regulatory provisions (if any):	n/a
8.3. If yes to question 8.2, which of the following alternatives best describes	n/a

the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	
Accounting and reporting according to other international standard (e.g. European System of Accounts).	n/a
Please specify:	n/a
Other.	n/a
Please specify:	n/a
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	National commission of public procurement and the financing body in case of external financing. The Commission gives its approval within 8 days, otherwise that approval is considered obtained and the procurement process can be launched.
and provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 1.1.1 of Chapter I of the Handbook, tender documents are sent to the national commission of public procurement for approval. In case of external financing, the financing body has to give a non-objection opinion.
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 68 of the PPP Law requires the National commission of public procurement to validate the procedure. This validation is organized in 2 stages: first, the commission certifies the procedure, after which the contract is signed and approved by the competent administrative authority. Only then, the Commission gives a final validation.</p> <p>Article 9 of the standard clauses for concessions furthermore indicates that validation by the National commission of public procurement is granted after a positive opinion from the High Court of Accounts and Administrative Disputes. When the procuring entity is a regional entity, an internal deliberation is additionally required.</p>
10. Does the procuring authority use transaction	Yes

advisors during the PPP project cycle?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 14.4 of the Ethics Charter, the procuring entity shall have specialized agents or trained agents taking care of monitoring public procurement and concessions contracts and, if necessary, hire consultants to support them in their tasks.
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.	No
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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	Yes

existing government priorities.	
Please elaborate and provide examples:	Appreciation is made project by project, without general prioritization.
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?	No
If yes, please specify:	n/a
If no, please elaborate:	Appreciation is made project by project, without general prioritization.
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)	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Socio-economic impacts are assessed even though not explicitly required by the regulatory framework.
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Affordability assessment is in practice conducted.

12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Risks are in practice evaluated and allocated.
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)	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 118 of the PPP regulations, the procuring authority has to prepare a report of desirability, which includes, according to Article 118-1, among others the comparative advantages.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	In practice the procuring entity weights the different public procurement options.
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Financial viability is in practice studied.
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Market interest for the project is in practice assessed.
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Environmental impacts are assessed.
12.8. Consultation process with affected communities on potential impact of the PPP project	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Potentially affected population are consulted.
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)?	Yes
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:	All conducted analysis is included in the tender documents.
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):	No regulatory basis
If no, please elaborate	n/a
14.1. Are the tender documents published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and please specify the website:	n/a
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	Article 14.4 requires the procuring authority to use standardized documents for public procurement and concessions contracts. Standard tender documents for 2 stages process for conventions of concession of public service facility are available here: http://www.oas.org/juridico/pdfs/mesicic4_hti_CNMP_dao.pdf Standard clauses for conventions of concession of public service facility are available on the following website: http://cnmp.gouv.ht/documentstypes/index .
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)	Pursuant to Article 6.2.3 of the standard clauses for concession, the procuring entity guarantees the concessionaire: the facilitation of the granting of authorizations, certificates or other documents coming within its remit and necessary for the conclusion of the agreement and for the realization of the project, after request duly formulated by the concessionaire to the competent authorities.
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 procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 6.2.3 of the standard clauses for concession, the procuring entity guarantees the concessionaire: the facilitation of the granting of authorizations, certificates or other documents coming within its remit and necessary for the conclusion of the agreement and for the realization of the project, after request duly formulated by the concessionaire to the competent authorities.
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)	Pursuant to Article 6.2.3 of the standard clauses for concession, the procuring entity guarantees the concessionaire: the facilitation of the granting of authorizations, certificates or other documents coming within its remit and necessary for the conclusion of the agreement and for the realization of the project, after request duly formulated by the concessionaire to the competent authorities.
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)	Pursuant to Article 6.2 of the standards clauses for concessions, the procuring authority ensure the actual provision for Land and/or facilities necessary for the realization of the project by the concessionaire, as well as the free and peaceful enjoyment of these properties during all the duration of the convention, subject to privileges of public authorities such as defined in the convention.
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
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):	Pursuant to Article 8 and 8-1 of the PPP Law, a committee of bid opening is created within the procuring authority taking into account qualification of its members. Members are from the commission created within the Ministry (within each Ministry, a commission shall be created for public procurement - Article 6 of the PPP Law); experts from other ministries of project units; external consultants; independent observants out from the public sector. When the procurement's finance is external, one of the observants is chosen by the financing body. Article 37 of the PPP regulation adds observants. Article 39 offers a possibility to hire experts to assist.
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to	No

have any specific qualifications.	
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):	<p>Article 69 of the PPP Law indicates the concessions are subject to Article 39 of the same Law. Article 39 requires a tender process to be used above certain thresholds, and publicity to be made in an international newspaper (or national or local depending on the contract's object). This applies to pre-qualification notices as well.</p> <p>Pursuant to article 121 of the PPP regulations, tender notices are published as indicated by Articles 66, 66-1 and 67. Those articles require publication through at least one national daily newspaper, radio and, if necessary, through posters. For international calls for tenders, notices are additionally in a widely disseminated international publication. Moreover, they are published on the National Commission of public procurement's website.</p> <p>Moreover, Section 1.1.3. of the Handbook requires that advertising needs to continue at least 4 non-consecutive days.</p>
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	cnmp.gouv.ht
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):	Pursuant to Article 69 of the PPP Law, bidders have at least 45 days to submit their proposals for international calls for bidders. In case of a national call for bidders, the time is reduced to 30 days.
and the time in calendar days:	45
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	Yes
Default	No

Relevant legal/regulatory provision (if any)	Pursuant to Article 71 of the PPP Law, selection of the private partner shall be made through open tendering or 2 stages tendering. Article 71-1 further requires using a one stage process when the procuring authority has detailed technical specifications and precise performance criteria or result indicators. Article 4.3 of the standard clauses for concessions further indicates that open tendering can only be used in the above cases.
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 119 of the PPP regulations, conventions of concession of public service facility are tendered through an open tendering with prequalification or a 2 stages tendering. Articles 94 to 100 of the PP regulations provide details. Section 4.4 indicates a prequalification is necessary when the procuring authority does not have detailed technical specifications and precise performance criteria or result indicators.
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 71 of the PPP Law, selection of the private partner shall be made through open tendering or 2 stages tendering. Article 71-2 provides indications related to 2 stage tendering. Articles 101-102 of the PPP regulations provide details.
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
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?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Article 42 of the PPP Law, the tender documents include instructions to bidders and a submission model. Pursuant to Article 13 of the PPP regulations, the tender documents include all indicates to facilitate the understanding of bidders. This includes the procurement mode. Article 2 of the Ethics Charter further requires the procuring authority to ensure the tender documents contain information related to, among others, competition rules, which shall be objective, written and understandable by all.</p>
If no, please elaborate:	<p>n/a</p>
22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 70 of the PPP Law makes provision for a prequalification of candidates in case of a concession of public service facility. Article 43 requires the prequalification notice to include a precise description of the conditions and criteria to be prequalified. These conditions have to include references concerning similar contracts, installations and equipment which the candidates have to execute the contract and their financial situation, as well as any other indicator.</p> <p>Article 73 of the PPP Law and 120 of the PPP regulations indicate the attribution is made according to the optimal combination of different evaluation criteria included in the tender documents.</p>
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	<p>No</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
If no, please elaborate:	<p>It seems that in practice, prequalification documents do not detail the criteria used in evaluating prequalification candidates.</p>
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	<p>Yes</p>

If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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):	No regulatory basis
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:	The answers to questions and clarifications can be accessed at the same location as the tender documents, indicated in the tender notice.
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):	No regulatory basis
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	No
If yes, please specify:	n/a
If no, please elaborate:	Answers are provided during the conference, as a result, all present bidders has them. However, absent ones do not get the content of those conferences.
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to	Yes

prepare and present a financial model with their proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
If no, please elaborate:	n/a
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 55 of the PPP Law requires the offers to be evaluated based on the criteria of the tender documents. Section 1.1.5.2 of the Handbook requires the bidding committee to prepare an analysis report showing the offers' ranking applying solely the criteria described as precisely as possible in the bidders instructions.
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.	Yes
Please specify and provide the relevant legal/regulatory provisions (if any):	Pursuant to article 54 of the PPP Law and section 1.1.5.1 of the Handbook, the bidding committee makes sure the minimum of 2 offers are reached. Otherwise, the call for tenders has to be resend within 15 days, unless the national commission of public procurement allows to continue. Once the retender has be realized, the committee can proceed with the evaluation, even if less than 2 offers have been made.
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
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
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 74 of the PPP Law, the procuring authority publishes an attribution notice of the concession according to Articles 39 and 68 of the present Law, which is in an international newspaper (or national or local depending on the object of the convention).</p> <p>Pursuant to Article 128 of the PPP regulations, award notice is made accordingly to Article 67, which requires publication through at least one national daily newspaper, radio and, if necessary, through posters. For international calls for tenders, notices are additionally in a widely disseminated international publication. Moreover, they are published on the National Commission of public procurement's website.</p> <p>Section 1.1.10 of the handbook indicates the award notice is published within 8 days of the definitive attribution.</p>
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	cnmp.gouv.ht
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):	Pursuant to Article 125 of the PPP regulations and section 1.1.8 of the Handbook, the procuring authority informs within 2 days all bidders of their offer's rejection.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 3 of the Ethics Charter, the names of private partners and value of contracts, the contractual timelines of implementation of concession and modifications having financial effect on the contract during the implementation are published in national or international publications and in the National Commission electronic newspaper .
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	No
Publication of the full PPP contract without including all its annexes and appendixes	No
Publication of a summary of the PPP contract without publishing the full PPP contract	Yes

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?	No
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?	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):	<p>Article 213 of the PPP regulations indicates implementation monitoring is done by the National Commission of public procurement and internal control bodies within the procuring authority, according to each procuring authority's conditions.</p> <p>Article 16 of the Ethics Chart indicates the procuring authority shall monitor efficiently the procurement and implementation of concessions. This requires: Insuring the regular functioning of the internal services of control; Taking any useful measure to cause the intervention, if necessary, of external organs of control, whether it is under administrative or jurisdictional mean; Protecting the balance between the requirement of control and that of the efficiency; Making sure that its agents apply the laws and the regulations forbidding the fraudulent practices and the acts of corruption; Sanctioning faulty agents within its remit; Suggesting to the National Commission of the public procurement the penalties applying against the tenderers and the holders of contracts for the committed faults.</p>
41.1. If yes, which of the following tools does it include (check all that apply)?:	Yes

Establishment of a PPP contract management team	
Relevant legal/regulatory provisions (if any):	Article 213 of the PPP regulations indicate implementation monitoring is done by the National Commission of public procurement and internal control bodies within the procuring authority, according to each procuring authority's conditions.
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	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
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 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.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet	No

sufficient qualification without specific details.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	Yes
Please elaborate and provide examples:	Qualifications are not provided by the regulatory framework, members will be appointed on a case to case basis.
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to the standard clauses of concessions, the procuring authority monitors the works with, if necessary, a more appropriate structure taking into account the specificities of the supervision or the operation's scope. The procuring authority is also in charge of the works "reception" (Articles 13 and 14).
42.1. If yes, is the PPP contract construction performance information made available to the public?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	n/a
If yes, please specify the website:	n/a
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):	Pursuant to Article 16 of the standard clauses of concessions, the methods of assessment of the operation are determined in the convention. The procuring authority has the right to make any verification which it considers useful to make sure that the clauses of the convention of concession are regularly observed by the cocontractor.
43.1. If yes, which of the following tools does it include (check all that apply)?:	No

Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
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)	No regulatory basis
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
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 contractual clauses) expressly regulate changes in	No

the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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).	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
In other cases, flexibility to change the ownership structure and/or assign the contract.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 80 of the PPP Law and Article 20 of PPP regulations, modification of the contract after notice has to go through an “avenant”, which cannot substitute another contract to the initial one, neither affect its economy or change its object fundamentally.
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 80 of the PPP Law, modifications have to be authorized by the National Commission of public procurement.
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.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 20 of PPP regulations, modification of the contract after the notice has to go through an “avenant”, which cannot substitute another contract to the initial one, neither affect its economy or change its object fundamentally. The modification cannot be of more than 30% of the initial value (Article 21).
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the financial and/or economic balance of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 20 of PPP regulations, modification of the contract after the notice has to go through an “avenant”, which cannot substitute another contract to the initial one, neither affect its economy or change its object fundamentally.
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 20-2 of the PPP regulations, modifications can relate to a prolongation or reduction of the implementation time.
A change in the agreed price or tariff.	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 18 of PPP regulations, the contract shall include price variation, taking into account the cost variation of the elements of the delivery.
46.3. Can the procuring authority unilaterally modify a PPP contract?	No
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 87 of the PPP Law defines force majeure, Article 87-1 indicates the principals circumstances, and Article 87-2 provides the consequences for the contract.
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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	Pursuant to Article 25 of the PPP Law, the private partner has to obtain an approval from the procuring authority and subcontracting has to be allowed within the tender documents. Moreover, Article 25-1 indicates that it cannot

contractual provisions (if any):	<p>subcontract more than 40% of the contract. Subcontracting cannot create a substantial modification of the cocontractor's qualification.</p> <p>Subcontractors are subject to the same incompatibilities as contractors (Article 26).</p> <p>Articles 55 to 56-2 of the PPP regulations provide details.</p>
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 95 to 95-1 of the PPP Law are related to dispute resolution, as Articles 225 to 239 of the PPP regulations.
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	Yes
If yes, please specify:	Articles 225-230-1 of the PPP regulations are related to the Committee of dispute resolution within the National Commission of public procurement. Article 228 is related to its missions and includes decision making within the amicable settlement of conflict related to implementation, recommendation to the National Commission sanctions for breach of law and faults in procuring or implementing concessions.
Local courts	Yes
Domestic arbitration	No
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	No
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	Pursuant to Article 228-1 of the PPP regulations, decisions of the Committee of dispute resolution within the National Commission of public procurement can be challenged in the High Court of Accounts and Administrative Disputes.
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	n/a
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
International arbitration	Yes

If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Haiti is party to the NY convention (5 Dec 1983)
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Haiti is a member of ICSID (Nov 26, 2009)
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
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 direct agreement should be signed with the lenders.	n/a
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.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	n/a
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):	Article 88 of the PPP Law indicates circumstances of termination of the public procurement contract, both for the public and private parties. Articles 199 of the PPP regulations details termination initiated by the public authority; Article 200 when initiated by the private partner; Article 201 for termination not initiated by any of them (death or insolvency). Further details are provided by the standard clauses of concessions.
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):	Pursuant to Article 88-2 of the PPP Law, the contract shall indicate the cases, conditions and calculation of damages depending on the termination cause. Articles 202-204 of the PPP regulations provide details.
Unsolicited Proposals	
34. Are unsolicited proposals in Haiti: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No

Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	Yes
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	No provisions regarding unsolicited proposals are included in the regulatory framework. However, contributors provide procuring authorities do accept them in practice. There is project of procedural manual on the matter.
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	No
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 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.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities	No

without establishing specific procedures to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	Yes
Please elaborate and provide examples:	Unsolicited proposals are not regulated, publicly initiated concessions are not prioritized within other public investment and there is no established practice.
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
and the time in calendar days:	45
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.	No
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No

39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a